



Strategies for the New York Cannabis Market

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March 9, 2022 Webinar



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About the Speakers



Omar Figueroa, Esq.

[Omar Figueroa](#) is the Founder and Principal Attorney of the Law Offices of Omar Figueroa, one of the leading cannabis licensing, regulatory compliance, and intellectual property law firms in California. Omar frequently speaks at cannabis events and has taught dozens of continuing legal education (CLE) seminars related to cannabis law and legal ethics. Omar is a Director of the [National Cannabis Industry Association](#), the [California Cannabis Tourism Association](#), and the Sebastopol Center for the Arts. He is also a Chapter Leader of the Sonoma County ACLU Chapter.

He is also a Founding Lifetime Member and former Director of the [International Cannabis Bar Association](#), a Lifetime Member of the [NORML Legal Committee](#), and recognized with the rare [Distinguished Counsel's Award](#) by NORML.

Omar is the author of numerous legal reference works on [California Cannabis Laws and Regulations](#) as well as [New York Cannabis Laws and Regulations](#).

Omar is a graduate of Yale College, Stanford Law School, and the Trial Lawyers College. He has also completed an Executive Education program for directors of corporate boards at the Wharton School in Philadelphia.

As a member of the prestigious [Ganjiier Council](#), Omar collaborated with cannabis luminaries in developing a curriculum for training cannabis sommeliers as well as a Systematic Assessment Protocol (SAP) for judging fine cannabis.



About the Speakers



Andrew Kingsdale, Esq.

Andrew Kingsdale joined our firm in 2018 with over ten years of litigation and transactional experience, including class actions on behalf of consumers, enforcing environmental laws on behalf of non-profits, and advising cannabis start-ups. Andrew is passionate about the medical benefits of cannabinoids and helping cannabis, hemp, and psychedelics businesses thrive.

Andrew is an active member of the [New York State Bar Association Cannabis Law Section](#), as well as the [New York City and Hudson Valley Cannabis Industry Associations](#). He was selected to Northern California Super Lawyers® for 2021, and before that was a Northern California Rising Star by Super Lawyers® from 2015 to 2017.

Andrew graduated from Dartmouth College with a focus on Asian Studies. After working in China for five years, he earned his law degree with honors from Temple University School of Law. He is licensed to practice law in California, New York and Massachusetts.



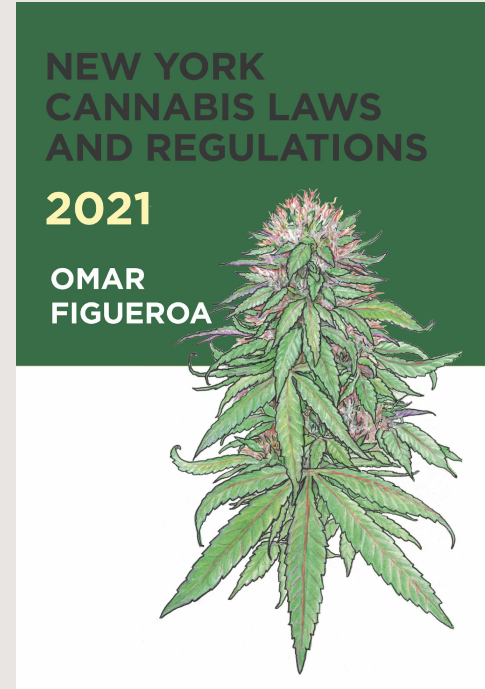
Agenda

- New York's Cannabis Laws
- Applying for a Cannabis License
- Buying or Investing in a Licensed Business or Registered Organization
- Licensing Intellectual Property to Licensed Businesses
- Selling Services to Licensed Businesses
- Selling/Distributing Cannabinoid Hemp Products
- Cannabis Tourism
- Q & A

Background on New York's Cannabis Laws



Historical Context

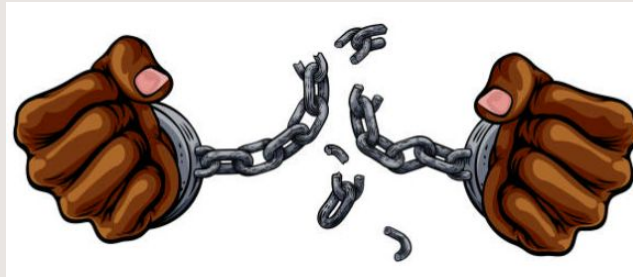




Historical Context – Criminal Justice Reform

WATERSHED MOMENT – Automatic Expungements

- 2019: Decriminalization legislation → 207,000 records automatically expunged
- March 31, 2021: Marijuana Regulation and Taxation Act (MRTA) signed into law
 - Automatic expungement if: convicted of possessing up to 16 ounces or selling up to 25 grams = legal under the MRTA
 - Estimated 250,000 additional criminal records expunged by March 2023





Historical Context – Regulated Market

- Medical Cannabis Program
 - Compassionate Care Act, 2014
 - Marijuana Regulation and Taxation Act (MRTA), 2021
 - Draft “Medical Cannabis” regulations: posted February 16, 2022
- Cannabinoid Hemp Program
 - Cannabinoid Hemp Program was created pursuant to Chapter 1 of the Laws of 2020
 - Marijuana Regulation and Taxation Act (MRTA), 2021
 - Manufacturing, Testing, Packaging, and Labeling regulations: November 3, 2021
- Adult-Use Program
 - Marijuana Regulation and Taxation Act (MRTA), 2021
 - Draft “Adult-use Cannabis” regulations: ????????



Marijuana Regulation and Taxation Act (MRTA)

- Cannabis Control Board (CCB), Office of Cannabis Management (OCM), Chief Equity Officer, State Cannabis Advisory Board
- “Social and Economic Equity Applicant”
 - “A goal shall be established to award fifty percent of adult-use cannabis licenses to social and economic equity applicants and ensure inclusion of:
 - (a) individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
 - (b) minority-owned businesses;
 - (c) women-owned businesses;
 - (d) minority and women-owned businesses, as defined in paragraph (d) of subdivision five of this section;
 - (e) distressed farmers, as defined in subdivision five of this section; and
 - (f) service-disabled veterans.”
- Registered Organizations

Applying for Cannabis Licenses



Factors to Consider When Choosing License Type

- Social and economic equity applicant
- Cross-ownership restrictions
- License transferability
- Site control requirements
- Location requirements
- Local jurisdiction control
- Taxation responsibilities
- Pricing restrictions





Medical Cannabis – New Registered Organizations

- Vertical integration: “acquiring, possessing, manufacturing, selling, delivering, transporting, distributing or dispensing cannabis for certified medical use.”
- Health care providers: safety inserts; pharmacist supervision; regulated pricing
- MRTA, Section 35: emphasis on diversity, equity, and accessibility
 - 9. In coordination with the chief equity officer the board shall register additional registered organizations to provide services to unserved and underserved areas of the state. . . . [R]egistered organizations shall be reflective of the demographics of the state, be representative of communities disproportionately impacted by cannabis prohibition, and be culturally, linguistically, and medically competent to serve unserved and underserved areas of the state. The board shall actively promote racial, ethnic, and gender diversity when registering additional registered organizations.



Adult-Use License Types

- | | |
|------------------------|--|
| 1. Cultivator | → Testing Laboratory Permits |
| 2. Nursery | → Cannabis Research License |
| 3. Processor | → “Special Use permits” |
| 4. Distributor | ◆ Industrial use permit |
| 5. Retail Dispensary | ◆ Trucking permit |
| 6. Delivery | ◆ Warehouse permit |
| 7. On-site consumption | ◆ Packaging permit |
| 8. Microbusiness | → Registered Organizations with adult-use privileges |
| 9. Cooperative | |



Adult-Use Licenses – General Selection Criteria

§ 64. Selection criteria. 1. The board shall develop regulations for use by the office in determining whether or not an applicant should be granted the privilege of an initial adult-use cannabis license, based on, but not limited to, the following criteria:

[. . .]

(e) where appropriate and applicable, the applicant possesses or has the right to use sufficient land, buildings, and equipment to properly carry on the activity described in the application or has a plan to do so if qualifying as a social and economic equity applicant;

(f) the applicant qualifies as a social and economic equity applicant or sets out a plan for benefiting communities and people disproportionately impacted by enforcement of cannabis laws;

(g) it is in the public interest that such license be granted, taking into consideration, but not limited to, the following criteria:

(ii) the number, classes, and character of other licenses in proximity to the location and in the particular municipality, subdivision thereof or geographic boundary as established by the board [. . .]



Adult-Use Licenses – Cultivator

- Growing, cloning, harvesting, drying, curing, grading, trimming
- Existing hemp growers have a head start – Conditional licenses, S.8084-A
 - Until June 30, 2024, may cultivate up to 43,560 square feet of canopy outdoors, or 25,000 square feet of canopy in a greenhouse
 - Until June 1, 2023, granted temporary authority to minimally process and distribute flower
- Indoor cultivation: emphasis on equity applicants?
- Cross-ownership?
 - Only one cultivator license, but license could authorize cultivation in multiple locations
 - Licensee also may apply for: 1) a processor license, 2) a distributor license to distribute only own products, and 3) a nursery license
- “Craft” designation coming? (e.g. hemp cannabinoid program)



Adult-Use Licenses – Nursery

- Only clones, immature plants, seeds, “and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis by licensed adult use cannabis cultivators, microbusinesses, cooperatives and registered organizations.”
- Cross-ownership?
 - May also hold cultivation, processor, and distribution license
- Equity?
 - “Granting of such licenses shall promote social and economic equity applicants”



Adult-Use Licenses – Processor

- Blending, extracting, infusing, packaging, labeling, branding and otherwise making or preparing cannabis products
- Existing hemp processors have a head start – Conditional licenses, S.8084-A
 - Until June 30, 2024, may process cannabis products
 - Until June 1, 2023, granted temporary authority to distribute flower
- Cross-ownership?
 - Only one processor license, but license could authorize multiple locations
 - Also may hold and operate adult-use cannabis cultivator, processor, and/or distributor license (solely for the distribution of own products) on the same premises.
- Must contract with, and submit products to, independent laboratory for testing.
 - The CCB “may assign an approved testing laboratory, which the processor of adult-use cannabis must use”



Adult-Use Licenses – Distributor

- Wholesale sales to dispensaries, on-site consumption, and delivery services
- Cross-ownership:
 - If also hold cultivator or processor license, then may only distribute your own products
- Taxes: responsible for paying per milligram THC tax (like tax on alcohol proof)
 - Unique, and complex! Will require careful tracking and compliance costs.
 - Edibles (e.g. food and beverages) are taxed at \$0.03 per mg of total THC
 - Concentrates (e.g. vaporization oil and resin) are taxed at \$0.008 per mg of total THC
 - Cannabis flower (e.g. loose flower or pre-rolls) are taxed at \$.0005 per mg total THC
- Strategies:
 - Have NY-specific inventory and tracking software
 - Seek reassurances from testing lab on THC measurements; reasonable reliance on the COA
 - Focus on wholesaling lower-dose products (e.g. edibles)



Adult-Use Licenses – Retail Dispensary

- Sells cannabis products directly to consumers; brick and mortar
- Cross-ownership? Restrictive
 - May have financial interest in up to three retail dispensaries
 - May NOT also hold an adult-use cultivation, processor, microbusiness, cooperative, distributor or on-site consumption license.
- Local control? Potentially lots
 - Opted out?
 - Time, place, and manner restrictions. Green zones?
 - Notice and comment period before application.
- Site control requirements
- Equity financing opportunity: \$200MM public-private fund
- Other Strategies



Adult-Use Licenses – On-site Consumption

- Sells directly to consumers for use on-site at the location; “like a bar”
- Local control? Likely lots
 - Opted out?
 - Time, place, and manner restrictions. Green zones.
 - Notice and comment period before application.
- “Gram Shop Liability”? Compare NY Dram Shop Act
 - Alcoholic Beverage Control Law § 65. Prohibited sales. No sales to:
 - 1. Any person, actually or apparently, under the age of twenty-one years;
 - 2. Any visibly intoxicated person;
 - General Obligations Law § 11-101. Compensation for injury caused by the illegal sale of intoxicating liquor. Right to recover actual and exemplary damages
- Site control requirements
- Strategies



Adult-Use Licenses – Delivery

- Delivers cannabis products to consumers
- Cross-ownership?
 - No person may have a direct or indirect financial or controlling interest in more than one delivery license.
- “each delivery licensee may have a total of no more than twenty-five individuals, or the equivalent thereof, providing full-time paid delivery services to cannabis consumers per week under one license.”
- Equity
 - “The granting of such licenses shall promote social and economic equity applicants as provided for in this chapter.”



Adult-Use Licenses – Microbusiness

- May be a cultivator, a processor, a distributor, and a retailer of their own cannabis products – vertical integration allowed!
- Cross-ownership?
 - No person may own more than one
 - owners may not have any interest in another adult-use license
- Equity?
 - “The granting of such licenses shall promote social and economic equity applicants as provided for in this chapter.”
- Intended for “craft” growers offering premium products.



Adult-Use Licenses – Cooperative

- Democratically controlled.
- May cultivate, produce, and distribute – but may not sell directly to consumers
- New Yorkers only
- Cross-ownership? No
 - No member may have interest in another license



Licenses: Takeaways and Strategies

A. Choose your “lane” carefully

Cultivation, nursery, processing, distribution	Retail dispensary, delivery, on-site consumption	Microbusiness	Medical/Registered Organization
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B. Location, Location, Location

C. Equity, Equity, Equity



License Applications: What to do now?

1. Draft a business plan
2. *Thoughtfully* form limited liability entity
3. Assemble your team and assign roles
4. Research local jurisdictions and scope out real estate
5. Be patient. No “gifting clubs” (or other illegal activity)!

Buying or Investing in a Licensed Cannabis Business or Registered Organization



Buying or Investing in a Licensee or RO

- ❖ License transferability restrictions & CCB-approval requirements
- ❖ Preserve the company's New York nexus
- ❖ Preserve the company's social & economic equity status
- ❖ Sec. 630 of the New York Business Corporation Law

Licensing Intellectual Property to Licensed Businesses



Licensing Intellectual Property

- Licensing Trademarks
 - Register trademarks/service marks in New York ASAP
 - “Use in commerce” requirement
 - Caution: New York Franchise Sales Act
 - Beware unintended franchises





Licensing Intellectual Property

- Licensing Trade Secrets

- Caution: licensing “genetics”
- Caution: NY has unique common law trade secret definition, including “continuous use”
 - Six-factor balancing test to determine if a “trade secret” exists
 - (1) the extent to which the information is known outside the business;
 - (2) the extent to which those involved with the business know the information;
 - (3) the extent to which measures are taken to protect the information’s secrecy;
 - (4) how valuable the information is;
 - (5) the expense and/or difficulty involved in developing the information; and
 - (6) the difficulty with which others could develop the information.

See, e.g., Marietta Corp. v. Fairhurst, 301 A.D.2d 734, 738 (3d Dep’t 2003).

Selling Services to Licensed Businesses



Selling Services

- Employee vs. Independent Contractor – multi-factor test
- Restricted functions
 - E.g. Registered Organizations, MRTA § 34. Registered organizations. ¶ 10:
“A registered organization may contract with a person or entity to provide facilities, equipment or services that are ancillary to the registered organization's functions or activities under this article including, but not limited to, shipping, maintenance, construction, repair, and security, provided that the person or entity shall not perform any function or activity directly involving the planting, growing, tending, harvesting, processing, or packaging of cannabis plants, medical cannabis, or medical cannabis products being produced by the registered organization; or any other function directly involving manufacturing or retailing of medical cannabis. . . .”

Selling or Distributing Cannabinoid Hemp Products



Cannabinoid Hemp Products - Brand Development

- Can apply now for:
 - Cannabinoid hemp distributor permit – \$300/year
 - Cannabinoid hemp retailer permit – \$300/year
 - Cannabinoid hemp processor license – \$1000 or \$3,500
- CBD and other cannabinoid products can include:
 - Tinctures, pill/ capsule, chewable/tablet, cosmetic, topical, food, beverage
- Not allowed (only for sale by adult-use cannabis licensees):
 - Delta-8 products
 - “injectable, inhaler, or flower product clearly labeled or advertised for the purpose of smoking or in the form of a cigarette, cigar or pre-roll or otherwise packaged or combined with other items designed to facilitate smoking such as rolling papers or pipes”

Cannabis Tourism



Cannabis Tourism

- MRTA has no “events” license
- Hotels rooms OK
 - NY Clean Indoor Air Act (Thirteen-E of the Public Health Law)

BENZINGA

Cornell Grads Co-Found Research-Based Marijuana Company, Plan To Open First NY Boutique Cannabis Hotel

by [Maureen Meehan](#), Contributor
February 24, 2022 4:23 PM | 2 min read

Q & A





Thank you!

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