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Recreational cannabis dispensaries get the green light in WNY

It will likely be weeks, if not months, til shops open here

BY SAMANTHA CHRISTMANN NEWS BUSINESS REPORTER

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"For the first time, New Yorkers in nearly every region of the state will have access to safer, high-quality, adult-use cannabis products." – Gov. Kathy

Hochul on Tuesday, pleased with a federal court ending a retail injunction in some areas, including WNY

The cannabis industry in Western New York got the news it had been waiting for Tuesday: A federal judge lifted the injunction that had been blocking the state from issuing licenses to open legal cannabis stores.

That means the first licenses to open stores in Western New York could be granted as soon as Monday, although it likely will be several weeks – if not months – before the first local store opens.

But the decision removes the roadblock that had stalled the state's program to start rolling out legal cannabis stores in Western New York. "For the first time, New Yorkers in nearly every region of the state will have access to safer, high-quality, adult-use cannabis products," Gov. Kathy Hochul said in a statement. "I am committed to ensuring New York continues to lead the nation in our safe and equitable approach to the cannabis market."

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The logjam was broken on Tuesday, when the U.S. 2nd Circuit Court of Appeals granted the state Office of Cannabis Management's request to narrow the injunction in the Variscite NY One case, which had been blocking adult-use recreational cannabis sales here and in four other regions of the state.

The ruling has no impact on legal weed sales already underway on tribal lands in Western New York, and does not address unlicensed weed dispensaries that have popped up in the region.

But there are questions about how that might play out and just how long it could take before Western New York sees its first licensed adult-use cannabis dispensaries open their doors.

What's next?

During the first and second round of licensing, the state planned to issue 22 cannabis licenses for "Conditional Adult-use Retail Dispensaries" (CAURD) in Western New York, but the injunction prevented it from granting any of them.

But the state agency still was able to continue with the application review process for the affected regions, said Patrick Hines, a partner at law firm Hodgson Russ. And that could allow the agency to move quickly now that the legal barrier has been lifted.

"The Office of Cannabis Management has already said, 'Listen, we've already looked at the applications for the regions that were previously enjoined. So we're ready to start issuing licenses or awarding licenses pretty quickly,'" he said.

The Cannabis Control Board has a meeting on the books for Monday morning where it was already set to name new license awardees.

"It's conceivable that licenses for Western New York and any other affected regions could come as early as Monday," Hines said.

How long before doors open at WNY's first CAURD dispensary?

Even if shops do get their licenses on Monday morning, it is not likely that shops will pop up by Tuesday.

"It does take a little bit of time," Hines said.

The state will need further information from applicants to complete the licensing process, but the initial granting of the license could allow those applicants to start finalizing leasing and financing arrangements.

"Assuming that the applicant has all their ducks in a row ahead of time, it should open up cash flow for them to get their information to the state, get open and start acquiring products that they can then sell," Hines said. "So the faster they can do that, the faster they can open their doors."

Tahlil McGough, the Office of Cannabis Management's deputy director of legislative affairs, said the agency should be able to move quickly.

"The OCM has already completed the back-office work of reviewing and scoring all applications for these newly freed regions, and the Dormitory Authority of the State of New York has never stopped searching for storefront locations and engaging in limited discussions with potential landlords," he wrote in a lengthy post on the LinkedIn website. "So we should not lose any time in getting everything rolling."

What does the late start mean for WNYers in the cannabis business?

The first Western New Yorkers were expected to have their legal cannabis retail licenses three months ago, but have been forced to the sidelines as the Variscite case played out. While it wasn't ideal, the damage wasn't irreparable, Hines said.

"I don't think they've been set back too much by the injunction," he said.

The state has issued only 66 licenses to CAURD applicants, and just a handful of licensed adult-use dispensaries have opened in the state.

"I don't think Western New York operators are necessarily too far behind the eight ball, especially given that the state has already said, 'By the way, we've looked at their applications and we're basically ready to go,'" Hines said.

Can the Variscite lawsuit still affect us here?

There's a possibility, Hines said. "Keep in mind that litigation is still ongoing, and they're still seeking, basically, to undo the CAURD program. It's just that the injunction's been lifted and the cat's kind of out of the bag," he said.

Variscite still seeks to open up licensing to applicants outside New York State, which could usher in competition from giant cannabis corporations much earlier than expected. The state had hoped to get smaller operators on their feet before being expected to compete against larger, more experienced and deeper-pocketed competitors.

Could the latest lawsuit from medical cannabis companies halt sales again in WNY?

While it could cause other problems, it is not likely that the new lawsuit will pause the efforts to launch sales in Western New York again. Earlier this month, a group of large medical cannabis companies challenged the state's rollout of legal adult-use pot sales, suing to force the state to open the licensing process to all potential applicants.

The Coalition for Access to Regulated & Safe Cannabis filed the lawsuit in State Supreme Court in Albany accusing the state's Office of Cannabis Management of unconstitutional overreach, seeking to immediately open up the application process for recreational cannabis dispensaries to all.

So far, licensing in the state has opened only to so-called "justice-involved individuals" – those or those close to them who have been convicted of a cannabis-related crime. Applicants also had to have a significant presence in New York State and show that they have successfully run a business.

"That lawsuit's seeking the opposite (of what Variscite is seeking)," Hines said. "They want the OCM to open up the program to basically all comers, including the registered organizations, the medical marijuana, and expand the program immediately."

Coalition members include large, out-of-state cannabis chains: Acreage Holdings, Pharma Cann, Green Thumb Industries and Curaleaf; as well as California and Brooklyn-based applicants and a medical cannabis practitioner in Westchester. Members of the coalition said they had planned to seek dispensaries when the first licensing window opened in New York State.

The latest lawsuit cites language in the Marijuana Regulation and Taxation Act that says the first round of adult-use dispensary licensing "should be opened for all applicants at the same time."

The lawsuit argues that the restrictions it placed on the first round of licensing are outside the OCM's legal authority, and it wants the CAURD license declared unconstitutional. The coalition also wants the state to pursue civil injunctions against all unlicensed cannabis shops. If that lawsuit is successful, it could quickly usher in largescale competition, and likely would have a significant impact on pricing as cultivators deal with unexpected demand. The Western New York ban came down in November, when Michigan company Variscite NY One said it was improperly kept out of the lottery to gain a CAURD license because it is based outside of New York state.

It listed Western New York and four other regions as its preferred place to do business, so sales had been on hold while the case made its way through the courts.

Now, the injunction has been narrowed to pause sales only in the Finger Lakes region –Variscite's first pick.

In addition to Western New York, the ruling opens up CAURD sales in the Hudson Valley, Central N.Y. and Brooklyn.