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## MEMORANDUM

**TO:** CANNABIS REGULATORY COMMISSION BOARD

**FROM:** JEFF BROWN, EXECUTIVE DIRECTOR

**SUBJECT:** TERRASCEND NJ, LLC PROPOSAL FOR ENFORCEMENT (NOV 03 2023)

**DATE:** [SEPTEMBER 8, 2023](#)

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**BACKGROUND:** On June 7, 2023, a Notice of Violation was issued to TerrAscend NJ, LLC, evidencing five separate violations that occurred at the entity’s dispensary locations and through their online ordering system. The Compliance Unit within the Office of Compliance and Investigations for the New Jersey Cannabis Regulatory Commission (“NJ-CRC”) became aware of these violations through patient complaints filed between May 21, 2023, and May 30, 2023, and received by the NJ-CRC on or about June 2, 2023. At that time, an investigation was conducted, and a monitoring report was created by Compliance Unit staff. Following receipt and review of the monitoring report, and upon a determination by the Director of the Office of Compliance and Investigations that violations had occurred, the matter was presented to Counsel’s Office for consideration. In coordination with Counsel’s Office and the Office of the Executive Director, the Notice of Violation was issued on June 7, 2023. On June 23, 2023, TerrAscend NJ, LLC responded to the Notice of Violation.

### **AUTHORITY:**

April 12, 2022, Final Agency Decision (for Maplewood and Phillipsburg)  
May 25, 2022, Final Agency Decision (for Lodi)

### **Plans for Patient Access**

The expanded ATC must satisfy the following conditions:

- Have business operating hours include at least 14 patient-only hours spread over at least three (3) days per week, and at least one (1) weekend day. Patient-only hours should be held at different times throughout the week to accommodate patients and designated caregivers with different schedules;
- Provide exclusive parking options for patients and designated caregivers at all times;



- Provide exclusive points-of-sale for patients and designated caregivers at all times;
- Provide express access to the ATC so that patients and designated caregivers do not have to wait in lines intended for the general public;
- Provide patients and designated caregivers with the exclusive ability to reserve products ahead of time so that they can be assured their order will be filled when going to the ATC;
- Provide a patient access telephone line staffed by ATC employees during all business hours to assist patients and designated caregivers trying to access the ATC;
- Within 30 days of being issued the above-listed licenses, hold at least two (2) virtual town halls with registered patients and caregivers to provide information on the ATC's patient access plan.

Each virtual town hall must be conducted in a manner that complies with any applicable patient privacy laws and regulations; and

- Provide the NJ-CRC with weekly reports on patient access. Weekly reports must include, at a minimum, the following information:
  - o Average wait times for patients
  - o Number of patients served
  - o Medicinal Cannabis Product Dispensed
  - o Medicinal Cannabis Product on-hand (packaged)
  - o Medicinal Cannabis Product on-hand (bulk)

#### **N.J. Admin. Code § 17:30-7.1**

(d) The Commission shall only accept a certification from an ATC pursuant to (c) above, when an ATC has proven, by clear and convincing evidence, that engaging in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable, shall not impact access for registered qualifying medical cannabis patients and shall not impact the availability of medical cannabis or medical cannabis products.

#### **N.J. Admin. Code § 17:30-20.4**

(a) During an onsite assessment, a review of financial records, or other Commission review of the license holder and its operations, if the Commission identifies a violation of the Act or this chapter, the Commission shall provide notice of the violation, including an official written report of the findings and the nature of the violation, to the cannabis business or testing laboratory within seven business days following the onsite assessment or other identification of the violation.

1. Such notice may be provided by service of written notice or the receipt of a written notice from an investigating officer that a violation has occurred, which may be presented to the license holder's owner, principal, or manager at the licensed premises or administrative office, or through



other reasonable form of notice, such as certified mail or personal service pursuant to N.J. Ct. R. 4:4-4.

(b) Unless otherwise specified by the Commission, within 20 business days of receipt of the notice of violation pursuant to (a) above, the cannabis business or testing laboratory shall:

1. Correct the violation(s); and
2. Notify the Commission, in writing, with a postmark date that is within 20 business days of the date of receipt of the notice of violation, of any corrective actions taken to correct the violations, and the date of implementation of such corrective actions.

(c) The violation identified pursuant to (a) above shall not be deemed corrected until the Commission verifies, in writing, within seven calendar days of receiving notice of corrective action pursuant to (b) above that the corrective action is satisfactory.

(d) If the violation identified pursuant to (a) above has not been corrected in accordance with (b) above, the Commission may, in its discretion, issue a notice of proposed suspension or revocation to the license holder and seek to revoke the cannabis business license in accordance with N.J.A.C. 17:30-20.8.

#### **N.J. Admin. Code § 17:30-20.6**

(a) This section sets forth civil monetary penalties for violations of the Act or this chapter and enforcement procedures for imposing and collecting civil monetary penalties by the Commission.

(b) A monetary penalty imposed by the Commission on a license holder pursuant to this subchapter may not exceed \$500,000 per violation. Penalties may be imposed on a license holder as follows:

1. Not more than \$500,000 per major license violation; and
2. Not more than \$50,000 per any other license violation.

(c) A violation by each entity or person per day shall constitute a separate incident for purposes of calculating the number of violations.

(d) The Commission may impose greater penalties for successive violations up to the maximum amounts set forth at (b) above.

(e) The penalty for a subsequent violation shall only be imposed if the license holder has been notified of the prior violation or violations.

1. Such notice may be provided by service of written notice or the receipt of a written notice from an investigating officer that a violation has occurred, which may be presented to the license holder's owner, principal, or manager at the licensed premises or administrative office, or other reasonable form of notice such as certified mail or personal service pursuant to N.J. Ct. R. 4:4-4.



2. If violations are discovered during an undercover or unannounced inspection or onsite assessment, then no notice of any prior violation is necessary to impose the penalty for a subsequent violation.

(f) Notwithstanding anything in this section, the Commission may, in the Commission's sole discretion, consider additional factors in determining the penalty for each violation. Such factors may include, but are not limited to:

1. Any prior violations that the license holder has admitted to or was found to have engaged in;
2. Good faith measures by the license holder to self-report or prevent the violation;
3. The license holder's record of compliance with the laws and rules pertaining to personal use cannabis;
4. Corrective action(s) taken by the license holder related to the current violation or prior violations;
5. Willfulness and deliberateness of the violation;
6. Likelihood of reoccurrence of the violation; and
7. Violations involving damage or danger to the life, health, welfare, safety, or property of any person.

(g) Any penalties, costs, and/or fees pursuant to this subsection may be imposed and collected by the Commission in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58–10 et seq.).

(h) The Commission may additionally seek reimbursement for the costs of the State, including, but not limited to:

1. Costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs for violations; and
2. Costs of cleaning up, mitigating, or remedying any environmental damage caused by a cannabis business or testing laboratory.

(i) The license holder may request an adjudicatory hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and 52:14F–1 et seq., to contest the Commission's imposition of a civil monetary penalty for any license violation within 14 days of receipt of the notice of civil monetary penalty.

(j) If the license holder requests an adjudicatory hearing pursuant to (i) above, the Commission shall arrange for a hearing to be conducted by the Commission and a final agency decision shall be issued after the hearing by the Commission.



1. If the Commission affirms the civil monetary penalty, it shall become final.

(k) The cannabis business may, pursuant to N.J.A.C. 17:30–20.10, apply for injunctive relief against the Commission's civil monetary penalty in the New Jersey Superior Court, Appellate Division.

**N.J. Admin. Code § 17:30-20.7**

(a) Violations shall be categorized as follows:

1. Category I, which is the exhibition of a pattern and practice of violating the requirements of the rules, posing a serious risk of harm to the health, safety, or welfare of consumers or personnel;
2. Category II, which is the failure to comply with administrative requirements, such that the licensee or permittee poses an immediate and serious risk of harm or actual harm to the health, safety, or welfare of consumers, personnel, or the general public, including, but not limited to, transfer of cannabis to a person under 21 years of age;
3. Category III, which is the submission of fraudulent, false, or misleading information, as to a material fact, to the Commission, or falsifying or concealing any record required to be maintained by the license holder;
4. Category IV, which is the failure of any owner, principal, management services contractor, employee, or volunteer of a cannabis business license holder or testing laboratory to register with the Commission and be issued a Cannabis Business Identification Card; or failure to complete training course, or failure to be in physical possession of their Cannabis Business Identification Card while acting in the course of their duties; and
5. Category V, which shall consist of other violations of the Commission's rules, or violations of valid ordinances established by municipalities that do not constitute a major violation.

(b) The Commission shall issue sanctions for violations of this chapter that account for the particular circumstances of the violation. The Commission shall consider, at a minimum, issuing the following sanctions for violations:



Category	Violation 1	Violation 2	Violation 3	Violation 4
I	Revocation			
II	\$500,000	Suspension	Revocation	
III	\$250,000	\$500,000	Revocation	
IV	\$10,000	\$25,000	\$50,000	Suspension
V	\$5,000	\$10,000	\$25,000	\$50,000

(c) A license holder shall pay an imposed civil monetary penalty by the time specified by the notice of enforcement action.

**IN-DEPTH REVIEW:** Inquiring parties can review the violations committed in the attached June 7, 2023, Notice of Violation. A deeper review of the complaints received, and the investigation conducted can be found in the attached Monitoring Report. The assertions made by multiple patients resulted in the findings that TerrAscend NJ, LLC has consistently provided an imbalanced list of products, providing more options to the adult use consuming community than to the medicinal patient population, both in their physical dispensary locations and online. This failure to prioritize patient access is in violation of the conditions established in the Final Agency Decisions affording TerrAscend NJ, LLC the opportunity to expand their operations into adult use, as well as the adult use regulations codified at N.J.A.C. 17:30.

Dating back to January 2020, when the NJ-CRC began tracking enforcement actions and violations within the industry, this is the first instance that TerrAscend NJ, LLC has been issued a Notice of Violation. However, this Notice of Violation does establish five separate violations, all stemming from concerns regarding patient access – a state priority of the Commission. The five violations occurring in a span of 10 days at the end of May 2023 may be considered as evidence of exhibiting a pattern of non-compliant behavior.

As is required when a Notice of Violation is issued, TerrAscend NJ, LLC did provide a corrective action plan within 20 days of receipt of the Notice of Violation. TerrAscend NJ, LLC stated in its corrective action plan that it has corrected the violations. TerrAscend NJ, LLC attested to compliance with the Final Agency Decisions and the regulations, confirmed its process controls, and articulated the corrective actions and preventative actions it has instituted, including review of TerrAscend NJ, LLC’s employee training guide and ensuring that the same is provided to all retail management to train staff; establishment of specific step-by-step instructions so that staff are aware of how to communicate, provide acceptable options, and complete successful transactions for all registered medicinal patients and caregivers; postage of signs at the dispensary point-of-sale counters notifying patients of their options if a cannabis product appears to only be available on the adult use menu; and specific notation in a patient’s sales record if the patient determines not to



wait for their transaction due to delays in migrating product in TerrAscend NJ, LLC's internal management system.

**RECOMMENDATION:** It is the opinion of staff that TerrAscend NJ, LLC has failed in five separate instances to adhere to the administrative requirements imposed by the regulations and Final Agency Decisions, but that the failure to adhere to the administrative requirements did not pose an immediate and serious risk of harm or actual harm to the health, safety, or welfare of consumers, personnel, or the general public. Therefore, the violations should be treated as Category V violations. As all five violations set forth in the Notice of Violation stem from a single investigation, and TerrAscend NJ, LLC was unable to rectify the first violation before the successive violations were discovered, it is recommended that each violation be considered a Category V, Violation 1, when calculating any potential sanctions.

# APPENDIX

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May 25, 2022, Final Agency Decision (for Lodi)

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