

**ALBANY COUNTY DEPARTMENT OF HEALTH
OFFICE OF THE COMMISSIONER OF HEALTH**

COMMISSIONER'S EMERGENCY PUBLIC HEALTH ORDER NO. 1 OF 2026

**ABATEMENT OF CONDITIONS DANGEROUS TO LIFE AND HEALTH: REMOVAL
OF KRATOM PRODUCTS, INCLUDING SYNTHETIC AND HIGH-POTENCY 7-
HYDROXYMITRAGYNE PRODUCTS, FROM RETAIL SALE**

PURSUANT TO sections 309, 324, 347, 348, 352, 1303, 1304, 1305, 1306 and 1308 of the New York State Public Health Law, section 902 of the Albany County Charter and the Albany County Sanitary Code, including Article I, Section 12 thereof, the Commissioner of Health of Albany County, possessing all of the powers of a local health officer and authority equal to that of a local board of health with respect to the investigation and abatement of public nuisances pursuant to Public Health Law §§ 352(2) and 1304, and in consultation with the Albany County Board of Health, hereby issues this Emergency Public Health Order.

WHEREAS, the Commissioner of Health and the Board of Health of Albany County are charged under the Public Health Law and the Albany County Sanitary Code with protecting the health of the residents of the County of Albany, including through the investigation, suppression, and removal of nuisances and conditions dangerous to life and health; and

WHEREAS, Section 902 of the Albany County Charter provides that, except as otherwise provided in the Charter, the Commissioner of Health shall have all the powers and perform all the duties conferred or imposed upon county health commissioners and county boards of health by applicable law, including the enforcement, abatement, and quasi-judicial powers conferred upon county boards of health by Public Health Law §§ 309, 1303 through 1306 and 1308; and

WHEREAS, kratom (*Mitragyna speciosa*) is a plant whose leaf contains the alkaloid mitragynine together with trace amounts, typically below 0.05% by dry weight, of the far more potent opioid-receptor agonist 7-hydroxymitragynine ("7-OH"); and

WHEREAS, manufacturers have, in recent years, begun to isolate, concentrate, and chemically or biosynthetically produce 7-OH and related semi-synthetic alkaloids at levels far exceeding those occurring naturally in the kratom leaf, and to sell the resulting tablets, gummies, shots, vapes and similar products, commonly referred to as "gas station heroin," at convenience stores, smoke shops, gas stations and online, without dosing controls, child-resistant packaging or safety data, and such products are opioid-receptor agonists of potency comparable to or exceeding morphine, sold at retail without age verification beyond that required by state law or any established safety profile; and

WHEREAS, on July 1, 2026, the United States Drug Enforcement Administration ("DEA"), upon a finding that such products present an "imminent hazard to the public safety," announced, and on July 6, 2026 published in the Federal Register, a notice of intent to issue an order temporarily placing in Schedule I of the federal Controlled Substances Act (i) 7-OH contained in any botanical material of the plant *Mitragyna speciosa* in excess of 0.05% on a dry-weight basis and (ii) 7-OH contained in any processed or finished product in excess of 0.05% by weight or by volume, or in an amount greater than 1.00 milligram per article (Docket No. DEA-1570; 91 Fed. Reg. 40917), together with a companion notice of intent to temporarily schedule

mitragynine pseudoindoxyl, MGM-15, and MGM-16 (Docket No. DEA-1644; 91 Fed. Reg. 40909); and

WHEREAS, pursuant to 21 U.S.C. § 811(h), the temporary scheduling orders so noticed may issue and take effect at any time on or after August 5, 2026, but as of the date of this Order no such temporary scheduling order has been published in the Federal Register, and the aforesaid substances accordingly remain unscheduled under both the federal Controlled Substances Act and article 33 of the New York Public Health Law; and

WHEREAS, in support of that proposed action, the DEA and the United States Department of Health and Human Services documented a sharp rise in poison-control exposure cases involving 7-OH products, including 165 reported cases between January and July of 2025, and at least nine fatal overdoses associated with such products reported in the federal Adverse Event Reporting System, and the United States Food and Drug Administration (“FDA”), which has never approved kratom or 7-OH for any medical use, has warned that concentrated 7-OH products present risks including respiratory depression, severe addiction, liver toxicity, seizures and death; and

WHEREAS, mitragynine, the principal alkaloid of the kratom leaf, is itself an opioid-receptor agonist associated with dependence, addiction, and adverse health effects; the FDA has warned consumers not to use kratom, has never approved kratom for any use, and has taken the position that kratom may not lawfully be marketed as a dietary supplement or added to conventional food; and

WHEREAS, these dangers have been realized in the Capital Region, including the death of a Ballston Spa resident, who died of kratom intoxication at the age of 27, and whose family’s advocacy contributed to the enactment of New York’s first kratom statutes; and

WHEREAS, the Albany County Department of Health has identified overdoses involving kratom and 7-OH that have impacted Albany County residents as well as the Greater Capital Region; and

WHEREAS, Kratom products are sold at retail without uniform or verifiable disclosure of alkaloid content; products presented as natural leaf frequently contain concentrated, synthetic, or semi-synthetic 7-OH that is not disclosed on their labeling; certificates of analysis are generated by or for producers and cannot be verified at the point of sale; and neither consumers nor inspectors can, without laboratory analysis of each individual product, reliably distinguish natural-leaf kratom from products containing dangerous concentrations of 7-OH; and

WHEREAS, on December 19, 2025, Governor Hochul signed legislation (S.4552-A/A.2340-A and S.8285/A.5852-A) prohibiting the sale of kratom to persons under twenty-one and requiring warning labels on kratom products, and in June 2026 both houses of the State Legislature unanimously passed further legislation (S.8925-A/A.9156-B) prohibiting the sale of products containing 7-OH in excess of 2% of total alkaloids or one milligram per serving; and

WHEREAS, the aforesaid state legislation (S.8925-A/A.9156-B) has not yet been delivered to or signed by the Governor and by its terms would not take effect until ninety days after becoming law, leaving a period during which no federal, state, or local enactment prohibits

the retail sale of high-potency 7-OH products and during which such products remain freely available at retail in Albany County; and

WHEREAS, counties across New York State have acted to remove these products from commercial shelves, including the County of Oneida (public health order effective June 5, 2026, prohibiting the sale of all kratom and kratom-derived products countywide, followed by a countywide local law adopted August 13, 2026), the County of Suffolk (Introductory Resolution No. 1279-2026), the County of Dutchess (local law prohibiting high-potency 7-OH concentrates while preserving natural leaf), and the County of Washington (Local Law “E” of 2026); and

WHEREAS, violations of this Order are punishable and remediable under existing law: Public Health Law § 12-b(1) makes the wilful violation of, or refusal or omission to comply with, any lawful order or regulation prescribed by a local board of health or local health officer a misdemeanor; Public Health Law § 348(2) makes non-compliance with any provision of a county sanitary code punishable by fine or imprisonment; Public Health Law § 1306 renders the expense of the suppression and removal of nuisance conditions recoverable by the County from the owner, occupant, or person who caused or maintained them; and Public Health Law § 1308 charges local boards of health with the enforcement of the Public Health Law and of state and local sanitary codes and authorizes application, ex parte, for a temporary restraining order where a violation requires immediate relief; and

WHEREAS, the Albany County Sanitary Code, duly adopted by the Albany County Board of Health and filed as a public record in the New York State Department of Health, provides in Article I, Section 12(c) that failure to comply with or perform an act required by any order duly issued by the Commissioner under the provisions of the Sanitary Code, the State Sanitary Code or the Public Health Law shall constitute a violation of the Sanitary Code; and

WHEREAS, Article I, Section 12(b) of the Sanitary Code, as amended by resolution of the Board of Health effective February 1, 1996, subjects any person who violates, disobeys or disregards any provision of the Sanitary Code, or any lawful notice, order or regulation made by the Commissioner thereunder, to a civil penalty not exceeding one thousand dollars (\$1,000.00) for a single violation, provides that each day on which such violation or failure continues constitutes a separate violation, and provides that such penalties may be sued for and recovered by the Commissioner in any court of competent jurisdiction within the health district; and Article I, Section 12(d) of the Sanitary Code, adopted effective November 1, 1989, establishes standardized procedures, comporting with due process of law, for the investigation and adjudication of alleged violations of the public health laws, including written notice, informal and formal hearings, the right to counsel, the right to present evidence and to examine and cross-examine witnesses, compulsory process, and a final decision and order of the Commissioner; and

WHEREAS, Public Health Law § 309(1)(f) authorizes a local board of health to prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding two thousand dollars (\$2,000.00) for a single violation or failure, to be sued for and recovered by it in any court of competent jurisdiction, and Public Health Law § 309 further confers upon a local board of health the powers to issue subpoenas, compel the attendance of witnesses, administer oaths, appoint hearing officers, and release or compromise penalties, all of which powers the Commissioner possesses pursuant to Section 902 of the Charter and Public Health Law § 352(2); and

WHEREAS, the continued display, sale, and distribution of Prohibited Kratom Products (as defined in Section 1 of this Order) within Albany County is a condition dangerous to life and health and a public health nuisance within the meaning of Public Health Law §§ 1303 and 1304, presenting an immediate danger to the public health that requires summary abatement pending permanent legislative action; and

WHEREAS, the Commissioner further and independently finds, in light of the opioid-receptor activity of mitragynine itself, the absence of any approved or lawfully marketed use of kratom, the prevalence of undisclosed 7-OH concentration in products presented as natural kratom, and the inability to reliably distinguish such products at retail without laboratory analysis of each individual product, that the display, sale, and distribution of all Kratom products within Albany County likewise constitutes a condition dangerous to life and health and a public health nuisance within the meaning of Public Health Law §§ 1303 and 1304, and that a categorical prohibition is the only fully administrable means of abating that condition; each of the foregoing findings is independent of the other, and the Commissioner would issue this Order on the basis of either finding standing alone;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Section 1. Definitions.

- (a) **“Kratom”** means any substance, material, mixture, compound, preparation, extract, or finished good containing any part of the plant *Mitragyna speciosa*, mitragynine, 7-hydroxymitragynine (also known as 7-OH), mitragynine pseudoindoxyl (also known as MP), dihydro-7-hydroxymitragynine (also known as MGM-15), 9-fluoro-7-hydroxymitragynine (also known as MGM-16), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible. Kratom includes any product held out as kratom.
- (b) **“Synthesized Kratom Alkaloid”** means any kratom alkaloid or alkaloid derivative that has been created or structurally altered by chemical synthesis or semi-synthesis, or produced by biosynthetic means, including without limitation 7-acetoxymitragynine, mitragynine pseudoindoxyl, and the compounds known as MGM-15 and MGM-16, together with their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, and any 7-hydroxymitragynine that has been isolated or concentrated above, or added to any product in excess of, the levels at which 7-hydroxymitragynine occurs naturally in the leaf of the plant *Mitragyna speciosa*. The term does not include an alkaloid naturally present in unadulterated leaf of the plant *Mitragyna speciosa* in its naturally occurring concentration and proportion.
- (c) **“Prohibited Kratom Product”** means any product that (i) contains a Synthesized Kratom Alkaloid; (ii) is botanical material of the plant *Mitragyna speciosa* containing 7-hydroxymitragynine in excess of 0.05% on a dry-weight basis; (iii) is a processed, extracted, or finished product, including any tablet, capsule, gummy, shot, beverage, or vape preparation, containing 7-hydroxymitragynine in excess of 0.05% by weight or by volume, or containing more than 1.00 milligram of 7-hydroxymitragynine per serving, unit, or article; (iv) is adulterated with any controlled substance listed in a schedule of Public Health Law § 3306 or of the federal Controlled Substances Act, or with tianeptine, any

synthetic cannabinoid, or any other pharmacologically active non-kratom substance; or (v) is packaged, flavored, or marketed in a manner reasonably likely to appeal to persons under twenty-one years of age, including without limitation through the use of cartoon characters, candy or confection branding, or imitation of the trademarks or trade dress of products marketed to minors. A Kratom product consisting of natural leaf of the plant *Mitragyna speciosa* in raw, dried, powdered, brewed, or encapsulated form, whose 7-hydroxymitragynine content does not exceed the threshold stated in clause (ii) of this subdivision, is not a Prohibited Kratom Product for purposes of this Order.

- (d) **“Covered Product”** means any Kratom product; provided that, during any period in which the categorical prohibition of Section 2(1) of this Order has been stayed, enjoined, invalidated, or otherwise rendered unenforceable as described in Section 8, “Covered Product” means a Prohibited Kratom Product.

Section 2. Prohibition; Cease and Desist.

1. No person or entity, commercial or otherwise, including any business, smoke shop, convenience store, gas station, or online platform, shall sell, offer for sale, distribute, market, or deliver any Kratom product within the County of Albany, and all retail establishments within Albany County shall immediately cease and desist the display, marketing, advertisement, sale, offer for sale, and distribution of all Kratom products.
2. Independently of paragraph 1 of this section, and without regard to the validity or enforceability of paragraph 1, no person or entity, commercial or otherwise, shall sell, offer for sale, distribute, market, or deliver any Prohibited Kratom Product within the County of Albany, and all retail establishments within Albany County shall immediately cease and desist the display, marketing, advertisement, sale, offer for sale, and distribution of all Prohibited Kratom Products. This paragraph states a separate, self-executing prohibition resting upon the independent findings recited above, and does not depend for its validity or operation upon paragraph 1 of this section.
3. The prohibitions of this section shall not apply to (a) the removal, quarantine, return to a supplier, transport for laboratory analysis, surrender, or destruction of a Covered Product undertaken under the direction of the Albany County Department of Health (the “Department”) pursuant to this Order, or (b) possession or handling by law enforcement, by the Department, or by a person registered or otherwise authorized under federal or state law to handle such substances for purposes of analysis, enforcement, or disposal.

Section 3. Removal and Quarantine.

1. Any entity engaged in the sale, trade, or other commerce involving Kratom shall, within forty-eight (48) hours of the effective time of this Order, remove all Covered Products from customer-facing shelves and areas of public access.
2. Existing inventory of Covered Products shall be securely quarantined in a non-public storage area pending inspection, return to the supplier, or destruction under the direction of the Department. The removal, quarantine, return, transport for laboratory analysis, surrender, or destruction of inventory in compliance with this Order shall not constitute a sale, distribution, or delivery in violation of this Order.

Section 4. Inspection; Proof of Compliance.

1. Public health officers and designated inspectors of the Department are authorized to enter and inspect, during business hours, any location where Kratom products are sold or believed to be sold, pursuant to Public Health Law § 1303.
2. Upon demand of an inspector, a business or individual offering any Kratom product for sale shall produce a certificate of analysis from an independent laboratory establishing the product's 7-hydroxymitragynine content and total alkaloid content. A Kratom product for which no such certificate is produced upon demand may be presumed to be a Covered Product and may be embargoed pending testing. While the categorical prohibition of Section 2(1) is in effect, no certificate of analysis shall authorize the sale of any Kratom product. During any period in which enforcement proceeds under Section 2(2) alone, a product consisting of natural leaf in raw, dried, powdered, or encapsulated form may be embargoed under this paragraph only where the Department has an articulable basis to believe that it is a Prohibited Kratom Product.
3. Inspectors are authorized to issue notices of violation and to seize and embargo Covered Products.
4. Following any inspection or examination conducted pursuant to this Order, the Department shall furnish the owner, agent, or occupant of the premises with a written statement of the results and conclusions of such examination, pursuant to Public Health Law § 1303(2).
5. Any person whose product has been embargoed or seized pursuant to this Order may, upon written request to the Commissioner of Health, obtain a hearing before the Commissioner or the Commissioner's designee, to be held within five (5) business days of receipt of the request. Embargoed product shall be released upon presentation of a certificate of analysis from an independent laboratory establishing that the product is not a Covered Product, or upon a determination in favor of the product's owner following such hearing.

Section 5. Enforcement; Penalties.

1. This Order shall be enforced by the Department and its designated public health officials, who shall exercise the inspection, embargo, and abatement powers conferred by the Public Health Law. The Albany County Sheriff's Office and local municipal law enforcement agencies may assist the Department upon its request.
2. Each day on which a violation of this Order continues constitutes a separate and distinct offense. Any person who wilfully violates, or refuses or omits to comply with, this Order is guilty of a misdemeanor pursuant to Public Health Law § 12-b(1). Non-compliance with this Order or with the Albany County Sanitary Code is punishable as provided in Public Health Law § 348(2) and in the Albany County Sanitary Code, and the expense of the suppression and removal of the conditions described herein shall be recoverable from the owner, occupant, or person who caused or maintained such conditions pursuant to Public Health Law § 1306.
3. The Department may also pursue injunctive and any other available relief in a court of competent jurisdiction, including application, ex parte, for a temporary restraining order

pursuant to Public Health Law § 1308 where a violation of this Order requires immediate relief, and continued non-compliance shall be referred to the appropriate authority for suspension or revocation of any applicable license or permit.

Section 6. Civil Penalties; Hearings.

1. This Order is a lawful order of the Commissioner of Health, duly issued under the Public Health Law, the Albany County Sanitary Code, and Section 902 of the Albany County Charter. Pursuant to Article I, Section 12(c) of the Albany County Sanitary Code, any failure to comply with or perform an act required by this Order constitutes a violation of the Sanitary Code.
2. Any person or entity that violates, disobeys or disregards this Order or any provision hereof shall be subject to a civil penalty for each violation of up to one thousand dollars (\$1,000.00) pursuant to Article I, Section 12(b) of the Sanitary Code and, as prescribed by this Order pursuant to Public Health Law § 309(1)(f), of up to two thousand dollars (\$2,000.00); provided that the aggregate civil penalty assessed for any single violation shall not exceed two thousand dollars (\$2,000.00). Each day on which a violation continues constitutes a separate violation. Civil penalties shall be sued for and recovered by the Commissioner in any court of competent jurisdiction within the health district and shall be payable to the County of Albany.
3. No civil penalty shall be assessed under this section except after written notice and an opportunity to be heard in accordance with the procedures of Article I, Section 12(d) of the Sanitary Code and Public Health Law §§ 309 and 12-a, including written notice of hearing served personally or by registered or certified mail within the time periods prescribed by Article I, Section 12(d); the right to appear with counsel; the right to present evidence and to examine and cross-examine witnesses; the right to compel the attendance of witnesses by subpoena; and, in the case of a formal hearing, sworn and recorded testimony, written findings of fact and conclusions, and a final decision and order of the Commissioner. The Commissioner may designate one or more hearing officers pursuant to Public Health Law § 309(1)(g).
4. A civil penalty assessed under this section shall be payable within thirty (30) days of the final determination assessing it and may be recovered, together with the expenses of suppression and removal recoverable under Public Health Law § 1306, in an action or proceeding brought by the County Attorney at the request of the Commissioner in any court of competent jurisdiction. Any such penalty may be released or compromised by the Commissioner pursuant to Public Health Law § 309(5) where substantial justice will best be served thereby.
5. The remedies provided or referenced in this section are additional and cumulative, and nothing in this section abridges or alters the criminal penalties provided by Public Health Law §§ 12-b(1) and 348(2) and Article I, Section 12(a) of the Sanitary Code, the recovery of abatement expenses pursuant to Public Health Law § 1306, the referral of continued non-compliance for suspension or revocation of any applicable license or permit, or the right to pursue injunctive or any other available relief, including application for a temporary restraining order pursuant to Public Health Law § 1308.

Section 7. Effective Date; Duration; Filing; Local Law.

1. This Order takes effect at 12:01 a.m. on September 1, 2026, provided that this Order shall first have been filed as a public record in the New York State Department of Health, and shall not be effective prior to such filing. This Order shall also be filed as a public record with the Albany County Department of Health and the office of the Albany County Clerk, and shall be published in such manner as the Commissioner of Health shall determine.
2. This Order shall remain in effect until the Commissioner of Health determines that the danger to the public health has abated, or until superseded by local law or by an effective state or federal prohibition, whichever first occurs. The Commissioner shall review the continued necessity of this Order at least every thirty (30) days and shall report thereon to the Board of Health.
3. It is the intent of the Commissioner that this Order serve as an interim measure, and the Albany County Legislature is respectfully requested to consider, at its earliest opportunity, local legislation addressing the subject matter of this Order.

Section 8. Severability; Preservation of Independent Prohibitions.

1. Each provision of this Order, and each of the prohibitions stated in Section 2, is independent and severable, rests upon the independent findings recited above, and would have been adopted by the Commissioner regardless of the adoption, validity, or enforceability of any other provision or prohibition.
2. If the categorical prohibition of Section 2(1), or its application to any person, product, or category of products (including natural-leaf kratom products), is stayed, enjoined, invalidated, or otherwise rendered unenforceable by a court of competent jurisdiction, in whole or in part: (a) the prohibition of Section 2(2) and every other provision of this Order shall continue in full force and effect, automatically and without interruption and without need for further action by the Commissioner or the Board of Health; (b) this Order shall thereafter be administered and enforced with respect to Prohibited Kratom Products to the same extent as if the categorical prohibition had not been adopted; and (c) any product embargoed or quarantined solely by operation of Section 2(1) that is not a Prohibited Kratom Product shall, upon written request, be released in accordance with Section 4(5).
3. If any provision of Section 6 of this Order, or the application to this Order of any penalty provision of the Albany County Sanitary Code or of Public Health Law § 309(1)(f), is held invalid or inapplicable, such holding shall not affect the prohibitions of Section 2 or any other provision of this Order, and violations of this Order shall remain punishable and remediable as provided in Section 5 and as otherwise provided by law.
4. Without limiting the foregoing, if any other provision of this Order, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this Order or its application to any other person or circumstance, and to that end the provisions of this Order are severable.

SO ORDERED:

Commissioner of Health, Albany County

Dated: August 24, 2026

Reviewed by the Albany County Board of Health on September 3, 2026.

President, Albany County Board of Health