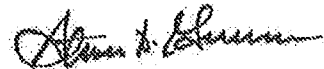


# EXHIBIT 8



CLERK OF THE COURT

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 Linda C. Anderson  
Chief Deputy Attorney General  
3 Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
4 Las Vegas, NV 89101  
P: (702) 486-3420  
5 F: (702) 486-3871  
E-mail: landerson@ag.nv.gov  
6

7 DISTRICT COURT  
CLARK COUNTY, NEVADA  
8

9 NEVADA MEDICAL MARIJUANA )  
DISPENSARY, INC.; GB SCIENCES NEVADA )  
10 LLC; NEVADA HOLISTIC MEDICINE LLC; )  
FIDELIS HOLDINGS, LLC; and DESERT INN )  
11 ENTERPRISES INC., )

12 Plaintiffs/Petitioners, )

13 vs. )

Case No.: A-14-710488-C  
Dept. No.: XXV

14 STATE OF NEVADA, DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )  
15 DIVISION OF PUBLIC AND BEHAVIORAL )  
HEALTH; et. al. )  
16

17 Defendants/Respondents )

18 STATE RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

19 Date of Hearing: December 12, 2014

20 Time of Hearing: 10:00 a.m.

21 COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF  
22 HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
23 (hereinafter "DIVISION"), by and through CATHERINE CORTEZ MASTO, Attorney General by  
24 Chief Deputy Attorney General, LINDA C. ANDERSON, and files this Response to the Motion for  
25 Preliminary Injunction on Order Shortening Time filed on December 3, 2014.

26 The Division of Public and Behavioral Health of the Department of Health and Human Services  
27 has the statutory authority to register medical marijuana establishments. The Division does not  
28 "license" the establishments and instead issues certificates of registration pursuant to NRS 453A.322.

1 The Nevada Legislature specified that the Division could accept applications once a calendar year for a  
2 ten day period as described in NRS 453.324(4). The registration of dispensaries was a competitive  
3 process because Clark County was limited to forty (40) dispensaries with the Clark County Commission  
4 allocating eighteen (18) to unincorporated Clark County pursuant to NRS 453A.324 and NRS  
5 453A.326. The Division scored and ranked the applications according to the considerations set forth in  
6 NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process  
7 by the Division. Because NRS 453A.700(1)(a) provides that the Division shall maintain the  
8 confidentiality of "the contents of any applications, records, or other written documentation that the  
9 Division or its designee creates or receives pursuant to the provisions of this chapter [NRS 453A]," the  
10 Division shall not disclose any contents of an application unless ordered to do so by this Court.  
11 Otherwise the Division will rely on the documents presented to the Court by the other parties in this  
12 matter in order to respond.

13 The Division agrees that a complaint for declaratory and injunctive relief is appropriate for  
14 Plaintiffs to challenge the process of the Division in registering dispensaries in unincorporated Clark  
15 County. Although "registration" is included in the definition of license under NRS 233B.034 for  
16 purposes of NRS 233B.127, the Nevada Legislature made clear that they did not intend to provide for  
17 notice and opportunity for hearing prior to a denial or revocation of a registration. NRS 453A.320  
18 provides the following:

19 The purpose for registering medical marijuana establishments and medical marijuana  
20 establishment agents is to protect the public health and safety and the general welfare of  
21 the people of this State. Any medical marijuana establishment registration certificate  
22 issued pursuant to NRS 453A.322 and any medical marijuana establishment agent  
registration card issued pursuant to NRS 453A.332 is a revocable privilege and the  
holder of such a certificate or card, as applicable, does not acquire thereby any vested  
right.

23 The Nevada Legislature provided that this "revocable privilege" does not implicate any property rights  
24 for due process concerns. Therefore, neither the Legislature nor the Division created any administrative  
25 hearing process to appeal a denial or a revocation of a registration.

26 Although the application form for a medical marijuana itself as described in NRS  
27 453A.322(3)(a)(2) did not include evidence of approval by the local authority of compliance with  
28 ...

1 zoning restrictions, the Nevada Legislature required that the applicant submit to the Division the  
2 following in NRS 453A.322(3)(a)(5):

3 If the city, town or county in which the proposed medical marijuana establishment will  
4 be located has enacted zoning restrictions, proof of licensure with the applicable local  
5 governmental authority or a letter from the applicable local governmental authority  
6 certifying that the proposed medical marijuana establishment is in compliance with those  
7 restrictions and satisfies all applicable building requirements

8 Therefore, any applicant was on notice that they needed to submit authorization from the local  
9 governmental authority to the Division or the application could be disqualified. The scoring and  
10 ranking by the Division focused on the criteria set forth by the Nevada Legislature in NRS 453A.328  
11 rather than zoning issues which would remain in the realm of the local authority.

12 The Division does not dispute that they issued registrations to applicants who did not comply  
13 with NRS 453A.322(3)(a)(5) and denied registrants who had been issued a special permit from Clark  
14 County. The Division did not disqualify those establishments listed as Defendants in this matter during  
15 the application process and issued a registration certificate which is currently provisional under NRS  
16 453A.326(3). The Division retains the ability to immediately revoke the registration pursuant to NRS  
17 453A.340(3) and NAC 453A.332(a) and (b) if those establishments cannot demonstrate compliance  
18 with the statutory requirements for the location of the facility. If the Division revokes the registration,  
19 there will be vacant slots for dispensaries in unincorporated Clark County under the current allocation.  
20 The Nevada Legislature did not address these circumstances or process if the Division failed to properly  
21 disqualify an applicant within the 90 day timeframe for review or if a registrant did not have local  
22 approval.

23 Absent action by either this Court or the Nevada Legislature, the Division will open up a new  
24 application period in the calendar year 2015 and consider new applications for dispensaries. The  
25 Nevada Legislature only authorized the Division to issue registration certificates "not later than 90 days  
26 after receiving an application to operate a medical marijuana establishment " as set forth in NRS  
27 453A.322(3). Without Court intervention, the Division does not have statutory legal authority to  
28 advance the applicants who had the requisite approval of the local authority after completion of the  
scoring by the Division after the 90 day period which has already run.

1 Although Division employees made representations in the past that indicated that the Division  
2 would move forward the next ranked applicant in the event that a registrant was not approved by the  
3 local authority, the Division cannot waive the statutory time frame of 90 days and alter its authority to  
4 issue registrations. While advancing the next ranked applicant would have provided an expedited  
5 approach to meet the needs of the community, it was not an option that the Nevada Legislature provided  
6 to the Division. The Division notes that it was not aware that any other entity changed its conduct in  
7 reliance on those representations.

8 Again, no property interest exists for any plaintiff or defendant and no dispensary is currently  
9 operating in Nevada at this time. Any establishment could be subject to challenge if the Division issued  
10 an additional registration after the 90 day period had run without an order from a court or specific  
11 authorization to do so by the Nevada Legislature. In order to promote stability to best meet the needs of  
12 the community, the Division respectfully requests this Court to resolve this dispute as to which entities  
13 are entitled to registration at this time.

#### 14 CONCLUSION

15 Unless otherwise directed by this Court or the Nevada Legislature, the Division plans to  
16 determine if any registrations should be revoked and then accept new applications next calendar year to  
17 ensure the issuance of the dispensary registrations for any vacant slots. The Division will improve the  
18 process to ensure that all applicants submit applicable approval of local authority as set forth in NRS  
19 453A.322(3)(a)(5) before issuing registration. However, the Division will also abide by any  
20 determination of this Court and issue registrations as ordered.

#### 21 AFFIRMATION PURSUANT TO NRS 239B.030

22 The undersigned does hereby affirm that the preceding document does not contain the social  
23 security number of any person.

24 Dated: December 9, 2014

25 CATHERINE CORTEZ MASTO  
26 Attorney General

27 By: /s/ Linda C. Anderson  
Linda C. Anderson  
28 Chief Deputy Attorney General

# EXHIBIT 7

**AFF**  
FENNEMORE CRAIG, P.C.  
Patrick J. Sheehan (Nevada Bar No. 3812)  
Richard H. Bryan (Nevada Bar No. 2029)  
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Email: [psheehan@fclaw.com](mailto:psheehan@fclaw.com)  
*Attorneys for Desert Aire Wellness, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

GB SCIENCES NEVADA, LLC, a Nevada  
limited liability company,

CASE NO. A-15-728448-C

Plaintiff,

DEPT. NO. I

vs.

STATE OF NEVADA, DIVISION OF  
PUBLIC AND BEHAVIORAL HEALTH OF  
THE DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; CITY OF LAS VEGAS,  
a municipal corporation and political  
subdivision of the State of Nevada; DESERT  
AIRE WELLNESS, LLC, a Nevada limited  
liability company; DOES 1-10, and ROE  
ENTITIES 1-100, inclusive,

Defendants.

DESERT AIRE WELLNESS, LLC, a Nevada  
limited liability company,

Counterclaimant,

vs.

GB SCIENCES NEVADA, LLC, a Nevada  
limited liability company,

Counterdefendant.

**AFFIDAVIT OF BRENDA GUNSALLUS**

STATE OF NEVADA )

COUNTY OF CLARK )

ss.





# EXHIBIT 6

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)  
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE NO. A-15-728448-C

GB Sciences Nevada LLC, Plaintiff(s) vs. Nevada Department of  
 Behavioral Health and Human Services, Defendant(s)  
 §  
 §  
 §  
 §  
 §  
 §

Case Type: Other Civil Matters  
 Date Filed: 12/02/2015  
 Location: Department 1  
 Cross-Reference Case Number: A728448

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### PARTY INFORMATION

---

Counter Claimant	Desert Aire Wellness LLC	Lead Attorneys Patrick J. Sheehan <i>Retained</i> 702-692-8011(W)
Counter Defendant	GB Sciences Nevada LLC	James E. Shapiro <i>Retained</i> 702-796-4000(W)
Defendant	City of Las Vegas	Bradford Robert Jerbic <i>Retained</i> 702-229-6629(W)
Defendant	Desert Aire Wellness LLC	Patrick J. Sheehan <i>Retained</i> 702-692-8011(W)
Defendant	Nevada Department of Behavioral Health and Human Services	Adam Paul Laxalt <i>Retained</i> 702-486-3420(W)
Plaintiff	GB Sciences Nevada LLC	James E. Shapiro <i>Retained</i> 702-796-4000(W)

---

### EVENTS & ORDERS OF THE COURT

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05/16/2016 **Motion For Reconsideration** (3:00 AM) (Judicial Officer Cory, Kenneth)  
*Defendant's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal*


#### Minutes

05/16/2016 3:00 AM

- COURT ORDERS, Defendant's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal DENIED IN ITS ENTIRETY. Mr. Shapiro to prepare the Order. CLERK'S NOTE: The above minute order has been distributed to: James Shapiro, Esq. (jshapiro@smithshapiro.com), Patrick Shehan, Esq. (psheehan@fclaw.com), and Linda Anderson, Esq. (landerson@ag.nv.gov). /mlt

[Return to Register of Actions](#)

# EXHIBIT 5



CLERK OF THE COURT

ADAM PAUL LAXALT  
Attorney General  
Linda C. Anderson  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
(702) 486-3420  
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E-mail: landerson@ag.nv.gov

DISTRICT COURT  
CLARK COUNTY, NEVADA

GB SCIENCES NEVADA, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC  
AND BEHAVIORAL HEALTH, et. al.

Defendants.

Case No. A-15-728448-C

Dept. No. I

**STATE RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

Date of Hearing: March 15, 2016

Time of Hearing: 9:00 a.m.

COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter "DIVISION"), by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy Attorney General, LINDA C. ANDERSON, and files this response to the Motion for Summary Judgment.

The Division of Public and Behavioral Health of the Department of Health and Human Services has the statutory authority to register medical marijuana establishments. The Division does not "license" the establishments and instead issues certificates of registration pursuant to NRS 453A.322. Although "registration" is included in the definition of license under NRS 233B.034 for purposes of NRS 233B.127, the Nevada Legislature made clear that they did not intend to provide for notice and

///

1 opportunity for hearing prior to a denial or revocation of a registration. NRS 453A.320 provides the  
2 following:

3       The purpose for registering medical marijuana establishments and medical marijuana  
4       establishment agents is to protect the public health and safety and the general welfare of  
5       the people of this State. Any medical marijuana establishment registration certificate  
6       issued pursuant to NRS 453A.322 and any medical marijuana establishment agent  
7       registration card issued pursuant to NRS 453A.332 is a revocable privilege and the  
8       holder of such a certificate or card, as applicable, does not acquire thereby any vested  
9       right.

10       The Nevada Legislature provided that this "revocable privilege" does not implicate any property rights  
11       for due process concerns. Therefore, neither the Legislature nor the Division created any administrative  
12       hearing process to appeal a denial or a revocation of a registration.<sup>1</sup>

13       At the time the Plaintiff made application for a medical marijuana establishment, the Division  
14       could not disclose the contents of any applications, records or other written documentation that the  
15       Division created or received pursuant to Chapter 453A of the Nevada Revised Statutes, according to  
16       NRS 453A.700. The Plaintiff did not provide consent to the Division to release their business name or  
17       scores and rankings so the Division maintained their confidentiality and did not post the name, scores or  
18       rankings of Plaintiff on the website of the Division. *See*, Plaintiff's Exhibit 12 of Motion for Summary  
19       Judgment. As of July 1, 2015, the Nevada Legislature amended NRS 453A.700 in Section 24 of Senate  
20       Bill 447 to continue to prohibit the disclosure of any information, documents or communications  
21       provided by an applicant such as Plaintiffs without the prior written consent of the applicant or pursuant  
22       to a lawful court order after timely notice of the proceeding has been given the applicant. The Division  
23       had received consent from the Plaintiff in another lawsuit. *See*, Exhibit 1.

24       Based on the representations made in another lawsuit, the Division can confirm that GB  
25       Sciences was initially ranked 13<sup>th</sup> in the State process. However, in the matter of *Acres Medical LLC v.*  
26       *Nevada Department of Health and Human Service*, A-15-719637-W, the Honorable Judge Cadish  
27       ordered that Acres Medical LLC should be ranked the 13<sup>th</sup> dispensary for the City of Las Vegas. *See*,

28       <sup>1</sup> The issue of whether a petition for judicial review is available was argued before the Nevada Supreme Court in the form of  
a petition for writ of mandamus in the matter of *Department of Health and Human Services v. Eighth Judicial District  
Court (Samantha's Remedies)*, Case No. 67423 but the Nevada Supreme Court declined to rule on the writ. Therefore, at  
this time Samantha Remedies is proceeding with a petition for judicial review of its application for a dispensary in City of  
Las Vegas in Department 8 before the Honorable Judge Smith. This Court denied their motion to intervene in this case.

1 Exhibit 2. Pursuant to Court order in another matter of *GB Sciences/Acres Medical v. State of Nevada*  
2 A-14-710597-C, the Division was directed to rescind the registration of Nuleaf, the 4<sup>th</sup> ranked  
3 dispensary in the City of Las Vegas and to issue a registration to Acres Medical, LLC. See, Plaintiff's  
4 Exhibit 14 of Motion for Summary Judgment. The Division notes that co-defendant Desert Aire  
5 Wellness, LLC (herein after "Desert Aire"), in this matter did consent to the website posting of their  
6 scoring and ranking of 10<sup>th</sup> for dispensaries in the City of Las Vegas in Exhibit 12 of the Motion for  
7 Summary Judgment.

8 **I. State Application Process for Dispensaries in the City of Las Vegas**

9 The Nevada Legislature specified that the Division could accept applications once a calendar  
10 year for a ten day period as described in NRS 453.324(4). The registration of dispensaries was a  
11 competitive process because Clark County was limited to forty (40) dispensaries with the Clark County  
12 Commission allocating twelve (12) to the City of Las Vegas pursuant to NRS 453A.324 and NRS  
13 453A.326. The Division scored and ranked the applications according to the considerations set forth in  
14 NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process  
15 by the Division as included in Exhibit 5 of Plaintiff's Motion for Summary Judgment.

16 Although the application form for a medical marijuana establishment as described in NRS  
17 453A.322(3)(a)(2) did not include evidence of approval by the local authority of compliance with  
18 zoning restrictions, the Nevada Legislature required in NRS 453A.322(3)(a)(5) that the applicant submit  
19 to the Division the following:

20 If the city, town or county in which the proposed medical marijuana establishment will  
21 be located has enacted zoning restrictions, proof of licensure with the applicable local  
22 governmental authority or a letter from the applicable local governmental authority  
certifying that the proposed medical marijuana establishment is in compliance with those  
restrictions and satisfies all applicable building requirements

23 The scoring and ranking by the Division focused on the criteria set forth by the Nevada Legislature in  
24 NRS 453A.328 rather than zoning issues which would remain in the realm of the local authority.  
25 Therefore, any applicant was on notice that they needed to submit authorization from the local  
26 governmental authority to the Division or the application could be disqualified.

27 As stated in the pleadings of the Plaintiff, the City of Las Vegas enacted zoning restrictions for  
28 these establishments prior to the ten day application period with the Division. However, it appears that

1 the City of Las Vegas did not complete its review of any location or issue any documentation of  
2 compliance at the time of the submission of applications to the Division by any of the applicants.  
3 Therefore, no applicant was able to submit either proof of licensure or a letter from the City of Las  
4 Vegas at the time of the application because the City of Las Vegas had not completed their process.  
5 Instead, as demonstrated in the documents submitted by Plaintiff, the City of Las Vegas notified the  
6 Division of those applicants who were in compliance in a letter dated October 30, 2014 (which was the  
7 last working day before the 90-day period ended on November 3, 2014). *See*, Plaintiff's Exhibit 9 of  
8 Motion for Summary Judgment. The Division does not dispute that they did not make any changes  
9 based on the notification by the City of Las Vegas after the applications had been submitted and issued  
10 registrations to applicants who had been scored and ranked as the top twelve for the City of Las Vegas  
11 by the Division without consideration of local zoning approval.

12 The Nevada Legislature did not address these circumstances or process if the local authority  
13 with zoning restrictions provided evidence of approval after the ten day application period but before  
14 the 90-day review period had run for the Division. Again, the Nevada Legislature only authorized the  
15 Division to issue registration certificates "not later than 90 days after receiving an application to operate  
16 a medical marijuana establishment as set forth in NRS 453A.322(3). Absent intervention from this  
17 Court, the Division does not have statutory authority to advance the applicants from the 2014  
18 application pool after the 90-day period which has already run as of November 3, 2014.

19 Although Division employees made representations in the past that indicated that the Division  
20 would move forward the next ranked applicant in the event that a registrant was not approved by the  
21 local authority, the Division cannot waive the statutory timeframe of 90 days and alter its authority to  
22 issue registrations. *See*, Exhibit 3. While advancing the next ranked applicant would have provided an  
23 expedited approach to meet the needs of the community, it was not an option that the Nevada  
24 Legislature provided to the Division. The Legislature affirmed this interpretation in the last session  
25 when they established a "one time extension period opened by the Division in calendar year 2014 for  
26 the purpose of issuing eleven additional registrations by September 1, 2015" in Section 5 of Senate Bill  
27 276. *See*, Exhibit 4.

28 ///

1 The registration certificates issued on November 3, 2014 were initially provisional under NRS  
2 453A.326(3), but as explained in their opposition to the motion for summary judgment, Desert Aire  
3 Wellness has completed the process and received a copy of their registration certificate. *See*, Exhibit J  
4 of Opposition by Desert Aire Wellness. Although the Division retains the ability to revoke the  
5 registration pursuant to NRS 453A.340, the Division has not identified a basis to revoke the registration  
6 issued to Desert Aire Wellness. At this time, all twelve of the dispensary slots in the City of Las Vegas  
7 are filled. Unless otherwise ordered by this Court, the Division could open up a new application period  
8 in the calendar year 2016 and consider new applications for dispensaries if any dispensary registration is  
9 revoked or surrendered because it does not comply with local zoning restrictions in the City of Las  
10 Vegas or the ongoing requirements of the Division.

## 11 II. Decisions of Other District Courts

12 Although the decisions of other District Court Judges are not binding upon this Court, Plaintiff  
13 has raised them in their motion and this Court may have an interest in the similarities and the  
14 differences with our present case. In *Henderson Organic Remedies v. State of Nevada* cited by the  
15 Plaintiff, the Court did not need to make a decision concerning whether a registration should be revoked  
16 because Wellness Connection surrendered their registration. *See*, Plaintiff's Exhibit 13 of Motion for  
17 Summary Judgment. In that case, Wellness Connection had received a denial from zoning at the City of  
18 Henderson prior to submitting a state application in contrast to Desert Aire who had not received a  
19 denial in the City of Las Vegas. *See*, Plaintiff's Exhibit 9 of Motion for Summary Judgment. In *GB*  
20 *Sciences Nevada LLC v. State of Nevada/Acres Medical, LLC v. State of Nevada*, A-14-710597-C,<sup>2</sup>  
21 NuLeaf had received a denial from the City of Las Vegas after the application had been submitted but  
22 just prior to the issuance of the registration by the Division in comparison with Desert Aire who did not  
23 obtain a decision from the City of Las Vegas until after the issuance of the state registration but was  
24 approved. *See*, Plaintiff's Exhibit 14 of Motion for Summary Judgment and Exhibit I in Desert Aire's  
25 Opposition.

26 Another Court began looking at this issue in *Nevada Medical Marijuana Dispensary v. State of*  
27 *Nevada*, A-14-710488-C which involved dispensaries in unincorporated Clark County. Clark County

28 <sup>2</sup> Nuleaf appealed this case to the Nevada Supreme Court on March 2, 2016.



1 had issued 18 special permits prior to the Division taking applications but had not issued denials to the  
2 other proposed dispensaries at the time of the application. The Honorable Judge Delaney found that the  
3 Division had substantially complied with the requirements of NRS 453A.322(3)(a)(5) in an order  
4 denying a request for preliminary injunction. This lawsuit was dismissed after the Nevada Legislature  
5 added additional dispensary slots to Clark County so both the top ranked dispensaries of the Division  
6 and all those issued special permits from County received registration. *See*, Exhibit 5. Therefore, in  
7 unincorporated Clark County, some dispensaries which are now operating did not have a special use  
8 permit at the time of their application.

9 **CONCLUSION**

10 Again, no property interest exists for either the plaintiff or any registrant in this matter and the  
11 Division does not have an interest in any particular establishment receiving or maintaining a  
12 registration. Although the Division will abide by a determination of this Court, the Division requests  
13 this Court consider the timing of this lawsuit. Desert Aire Wellness LLC is one of six dispensaries  
14 currently operating in the City of Las Vegas at this time. GB Sciences has not yet provided any  
15 information on how soon it would be able to provide services to the community if the Court granted  
16 their requested relief.

17 **AFFIRMATION PURSUANT TO NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain the social  
19 security number of any person.

20 Dated: March 3, 2016

21 ADAM PAUL LAXALT  
22 Attorney General

23 By: /s/ Linda C. Anderson  
24 Linda C. Anderson  
25 Chief Deputy Attorney General  
26  
27  
28

# EXHIBIT 4

# Desert Aire Wellness pot shop wins Las Vegas approval

By JAMES DEHAVEN LAS VEGAS REVIEW-JOURNAL

December 17, 2014 - 9:02pm

Posted Updated December 17, 2014 - 10:01pm



Desert Aire Wellness' first medical marijuana dispensary hearing went as well as the company could have hoped.

image

Desert Aire Wellness' first medical marijuana dispensary hearing went as well as the company could have hoped.

Las Vegas leaders on Wednesday approved Desert Aire's bid to build a pot shop at 420 E. Sahara Ave. — signing off on the group some six weeks after they OK'd 27 other dispensary license applications and only two weeks after formally reintroducing the company to the city's pot hearing process.

Desert Aire, which pulled its medical marijuana permit application ahead of the city's first round of medical marijuana hearings in October, appeared to have lost out on its bid to claim one of Las Vegas' 12 much-coveted pot shop licenses.

That was before the Nevada Division of Public and Behavioral Health ranked the company as the city's 10th-

best pot shop hopeful, sparking a lawsuit over whether city leaders could fold the group back into Las Vegas' cutthroat marijuana licensing process — perhaps at the expense of a city-approved applicant.

Las Vegas leaders and state regulators, who conducted parallel pot permit application vetting processes, found themselves on the same page on 10 of the city's 12 would-be medical marijuana dispensary owners.

Only Desert Aire and California-based Nuleaf CLV won state, but not city credentials. Both companies were reintroduced to the city's pot permit process one day after GB Sciences Nevada LLC — ranked as the city's 13th-best applicant by state regulators — filed a lawsuit seeking to block the companies from re-applying for city entitlements.

That lawsuit — which claims the companies left key information out of their state applications — is still working its way through the courts.

With similar lawsuits filed against medical marijuana companies in two other jurisdictions, City Council members on Wednesday didn't hesitate to move ahead with Desert Aire's revived pot shop bid.

Councilman Bob Coffin, who had advised the group to table its dispensary proposal during October's two-day pot hearing marathon, offered a mea culpa of sorts before joining four of his colleagues to approve the application.

"These are not our rich friends we've grown accustomed to seeing, looking for favors" he said.

"I think they're in this business for the right reasons.

"I suggested they withdraw, so I guess this is on me. I didn't think they had neighborhood support. ... Little did I know that they not only have neighborhood support, they actually scored very high on the state's exam. That's why they are here."

Coffin, who represents the ward where Desert Aire hopes to open its doors, said the group had adequately addressed staff concerns over its ownership group's "personal and business history," along with planning commissioners' questions about the availability of parking at the company's preferred dispensary location.

He said the company held two community outreach meetings to take stock of mostly favorable neighborhood opinions on the proposed pot shop.

But Desert Aire isn't quite out of the woods.

Southern Nevada's only all-female dispensary group faces another court date over its application, perhaps as soon as next week.

Company manager Paula Newman declined to comment on pending litigation, but said the group was "relieved and excited" to have finally picked up its city permits.

Nuleaf, the other Las Vegas pot shop hopeful named in the litigation, will be given a chance to find a new location for its proposed pot shop before City Council members rehear that company's application.

A date has not yet been set for those hearings.

Contact James DeHaven at [jdehaven@reviewjournal.com](mailto:jdehaven@reviewjournal.com) or 702-477-3839. Follow him on Twitter: @JamesDeHaven.



# EXHIBIT 3

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*

TRACEY D. GREEN, MD  
*Chief Medical Officer*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 · Fax: (775) 684-4211

## Medical Marijuana Establishment Registration Certificate

### Request for Applications

Release Date: May 30, 2014

Accepting Applications Period: August 5 - 18, 2014

*(Business Days M-F, 8:00 A.M. - 5:00 P.M.)*

For additional information, please contact:

Medical Marijuana Establishment (MME) Program

Division of Public and Behavioral Health

4150 Technology Way, Suite 104

Carson City, NV 89706

Phone: 775-684-3487

Email address: [medicalmarijuana@health.nv.gov](mailto:medicalmarijuana@health.nv.gov)

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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
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**APPLICANT INFORMATION SHEET FOR MEDICAL MARIJUANA ESTABLISHMENT  
APPLICATION**

Applicant Must:

- A) Provide all requested information in the space provided next to each numbered question. The information provided in Sections 1 through 10 will be used for application questions and updates;
- B) Type or print responses; and
- C) Include this Applicant Information Sheet in Tab III of the Identified Criteria Response.

1	Company Name			
2	Street Address			
3	City, State, ZIP			
4	<b>Telephone Number</b>			
	Area Code	Number	Extension	
5	<b>Facsimile Number</b>			
	Area Code	Number	Extension	
6	<b>Toll Free Number</b>			
	Area Code	Number	Extension	
7	<b>Contact Person for providing information, signing documents, or ensuring actions are taken as per Section 23 of LCB File No. R004-14A</b>			
	Name:			
	Title:			
	Address:			
	Email Address:			
8	<b>Telephone Number for Contact Person</b>			
	Area Code:	Number:	Extension:	
9	<b>Facsimile Number for Contact Person</b>			
	Area Code:	Number:	Extension:	
10	<b>Contact Person Signature</b>			
	Signature:			Date:



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## 1. TERMS AND DEFINITIONS

For the purposes of this Application, the following terms/definitions will be used:

<b>TERMS</b>	<b>DEFINITIONS</b>
<i>Applicant</i>	Organization/individual(s) submitting an application in response to this request for application.
<i>Division</i>	The Nevada Division of Public and Behavioral Health of the Department of Health and Human Services.
<i>Edible marijuana products</i>	As per NRS 453A.101, products that contain marijuana or an extract thereof and are intended for human consumption by oral ingestion and are presented in the form of foodstuffs, extracts, oils, tinctures and other similar products.
<i>Electronic funds transfer</i>	Electronic funds transfer (EFT) is the electronic exchange, transfer of money from one account to another, either within a single financial institution or across multiple institutions, through computer-based systems.
<i>Electronic verification system</i>	As per NRS 453A.102, an electronic database that keeps track of data in real time and is accessible by the Division and by registered medical marijuana establishments.
<i>Enclosed, locked facility</i>	As per NRS 453A.103, a closet, display case, room, greenhouse, or other enclosed area that meets the requirements of NRS 453A.362 and is equipped with locks or other security devices which allow access only by a medical marijuana establishment agent and the holder of a valid registry identification card.
<i>Excluded felony offense</i>	As per NRS 453A.104, a crime of violence or a violation of a state or federal law pertaining to controlled substances, if the law was punishable as a felony in the jurisdiction where the person was convicted. The term does not include a criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before or an offense involving conduct that would be immune from arrest, prosecution or penalty, except that the conduct occurred before April 1, 2014, or was prosecuted by an authority other than the State of Nevada.
<i>Facility for the production of edible marijuana products or marijuana infused products</i>	As per NRS 453A.105, a business that is registered with the Division pursuant to NRS 453A.322, and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to medical marijuana dispensaries.

<b><i>Identified Response</i></b>	A response to the application in which information is included, including any descriptive information, that identifies any and all Owners, Officers, Board Members or Employees and business details (proposed business name(s), D/B/A, current or previous business names or employers). This information includes all names, specific geographic details including street address, city, county, precinct, ZIP code, and their equivalent geocodes, telephone numbers, fax numbers, email addresses, social security numbers, financial account numbers, certificate/license numbers, vehicle identifiers and serial numbers, including license plate numbers, Web Universal Resource Locators (URLs), Internet Protocol (IP) addresses, biometric identifiers, including finger and voice prints, full-face photographs and any comparable images, previous or proposed company logos, images, or graphics and any other unique identifying information, images, logos, details, numbers, characteristics, or codes.
<b><i>Identifiers</i></b>	An assignment of letters, numbers, job title or generic business type to assure the identity of a person or business remains unidentifiable. Assignment of identifiers will be application specific and will be communicated in the application in the identifier legend.
<b><i>Independent testing laboratory</i></b>	As per NRS 453A.107, a business that is registered with the Division to test marijuana, edible marijuana products and marijuana- infused products. Such an independent testing laboratory must be able to determine accurately, with respect to marijuana, edible marijuana products and marijuana-infused products, the concentration therein of THC and cannabidiol, the presence and identification of molds and fungus, and the presence and concentration of fertilizers and other nutrients.
<b><i>Inventory control system</i></b>	As per NRS 453A.108, a process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for medical purposes from the point of cultivation to the end consumer.
<b><i>Marijuana</i></b>	As per NRS 453.096, all parts of any plant of the genus Cannabis, whether growing or not, and the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. Marijuana does not include the mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

<i>Marijuana infused products</i>	As per NRS 453A.112, products that are infused with marijuana or an extract thereof and are intended for use or consumption by humans through means other than inhalation or oral ingestion. The term includes, without limitation, topical products, ointments, oils and tinctures.
<i>May</i>	Has the meaning ascribed to it in NRS 0.025.
<i>Medical marijuana dispensary</i>	As per NRS 453A.115, a business that is registered with the Division and acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card.
<i>Medical marijuana establishment</i>	As per NRS 453A.116, an independent testing laboratory, a cultivation facility, a facility for the production of edible marijuana products or marijuana-infused products, a medical marijuana dispensary, or a business that has registered with the Division and paid the requisite fees to act as more than one of the types of businesses.
<i>Medical marijuana establishment agent</i>	As per NRS 453A.117, an owner, officer, board member, employee or volunteer of a medical marijuana establishment. The term does not include a consultant who performs professional services for a medical marijuana establishment.
<i>Medical marijuana establishment agent registration card</i>	As per NRS 453A.118, a form of identification that is issued by the Division to authorize a person to volunteer or work at a medical marijuana establishment.
<i>Medical marijuana establishment registration certificate</i>	As per NRS 453A.119, a certificate that is issued by the Division, pursuant to NRS 453A.332, to authorize the operation of a medical marijuana establishment.
<i>Medical use of marijuana</i>	As per NRS 453A.120, the possession, delivery, production or use of marijuana; the possession, delivery or use of paraphernalia used to administer marijuana; as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.
<i>Must</i>	Has the meaning ascribed to it in NRS 0.025.
<i>NAC</i>	Nevada Administrative Code -- All applicable NAC documentation may be reviewed via the Internet at: <a href="http://www.leg.state.nv.us/NAC/CHAPTERS.HTML">http://www.leg.state.nv.us/NAC/CHAPTERS.HTML</a> .

<i>Non-Identified Response</i>	A response to the application in which no information is included or any descriptive information is included that would permit an evaluator to reasonably draw a conclusion as to the identity of any and all owners, officers, board members or employees and business details (proposed business name(s), D/B/A, current or previous business names or employers). Identifiers that must be removed from the application include all names, specific geographic details including street address, city, county, precinct, ZIP code, and their equivalent geocodes, telephone numbers, fax numbers, email addresses, social security numbers, financial account numbers, certificate/license numbers, vehicle identifiers and serial numbers, including license plate numbers, Web Universal Resource Locators (URLs), Internet Protocol (IP) addresses, biometric identifiers, including finger and voice prints, full-face photographs and any comparable images, previous or proposed company logos, images, or graphics and any other unique identifying information, images, logos, details, numbers, characteristics, or codes.
<i>NRS</i>	Nevada Revised Statutes -- All applicable NRS documentation may be reviewed via the Internet at: <a href="http://www.leg.state.nv.us/NRS/">http://www.leg.state.nv.us/NRS/</a> .
<i>Shall</i>	Has the meaning ascribed to it in NRS 0.025.
<i>State</i>	The State of Nevada and any agency identified herein.

## 2. APPLICATION OVERVIEW

The 2013 Legislature passed Senate Bill 374 relating to medical marijuana, providing for the registration of medical marijuana establishments authorized to test marijuana in a laboratory, cultivate or dispense marijuana or manufacture edible marijuana products or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana. Senate Bill 374 also provides for the registration of agents who are employed by or volunteer at medical marijuana establishments, setting forth the manner in which such establishments must register and operate, and requiring the Division of Public and Behavioral Health (Division) to adopt regulations. Senate Bill 374 has now been included in the codified NRS 453A.

The regulations provide provisions for the establishment, licensing, operation and regulation of medical marijuana establishments in the State of Nevada. The regulations address this new industry as a privileged industry as outlined in NRS 453A.320.

The Division is seeking applications from qualified applicants in conjunction with this application process for medical marijuana establishment certificates. The resulting establishment certificates will be for an initial term of one (1) year, subject to Section 34 of LCB File No. R004-14A.

### 3. APPLICATION TIMELINE

The following represents the timeline for this project.

Task	Date/Time
Request for Application Date	5/30/2014
Deadline for Submitting Questions	6/20/2014 2:00 PM
Answers Posted to Website	On or before 7/7/2014
Opening of 10 Day Window for Receipt of Applications	8/5/2014 8:00 AM
Deadline for Submission of Applications	8/18/2014 5:00 PM
Evaluation Period	8/5/2014 - 11/2/2014
Provisional Certificates Issued	On or about 11/3/2014

### 4. APPLICATION INSTRUCTIONS

The State of Nevada, Division of Public and Behavioral Health, on behalf of the Department of Health and Human Services, is seeking applications from qualified applicants to receive provisional certificates to issue medical marijuana establishment certificates.

The Division anticipates issuing medical marijuana establishment certificates in conjunction with this application process and in compliance with Nevada statutes and regulations. Therefore, applicants are encouraged to be as specific as possible in their application about the services they will provide, geographic location, and submissions for each criteria category.

All questions relating to this application and the application process must be submitted in writing to [medicalmarijuana@health.nv.gov](mailto:medicalmarijuana@health.nv.gov) no later than 2:00 P.M. on 6/20/2014. Calls should only be directed to the phone number provided in this application. No questions will be accepted after this date. Answers will be posted to the Medical Marijuana Program FAQ section of the Division's website no later than 7/7/2014 at <http://health.nv.gov/MedicalMarijuana.htm>.

## 5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

### 5.1. GENERAL SUBMISSION REQUIREMENTS

- 5.1.1. Applications must be packaged and submitted in counterparts; therefore, applicants must pay close attention to the submission requirements. Applications will have an Identified Criteria Response and a Non-Identified Criteria Response. Each must be submitted in individual 3-ring binders. Applicants must submit their application broken out into the two (2) sections required in a single box or packaged for shipping purposes.
- 5.1.2. The required CDs must contain information as specified in Section 5.4.
- 5.1.3. Detailed instructions on application submission and packaging follows, and applicants must submit their applications as identified in the following sections.
- 5.1.4. All information is to be completed as requested.
- 5.1.5. Each section within the Identified Criteria Response and the Non-Identified Criteria Response must be separated by clearly marked tabs with the appropriate section number and title as specified.
- 5.1.6. If discrepancies are found between two (2) or more copies of the application, the **MASTER COPY** shall provide the basis for resolving such discrepancies. If one (1) copy of the application is not clearly marked "**MASTER**," the Division may, at its sole discretion, select one (1) copy to be used as the master.
- 5.1.7. For ease of evaluation, the application must be presented in a format that corresponds to and references sections outlined within this submission requirements section and must be presented in the same order. Written responses must be typed and in bold/italics and placed immediately following the applicable criteria question, statement and/or section.
- 5.1.8. Applications are to be prepared in such a way as to provide a straightforward, concise delineation of information to satisfy the requirements of this application.
- 5.1.9. In a Non-Identified Criteria response, when a specific person or company is referenced, the identity must be submitted with an Identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H), to be submitted in the Identified Criteria response section.
- 5.1.10. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the application instructions, responsiveness to the application requirements, and on completeness and clarity of content.
- 5.1.11. Applications must not be printed on company letterhead and/or with any identifying company watermarks. Applicants must submit response using plain white paper.
- 5.1.12. Materials not requested in the application process will not be reviewed or evaluated.



5.1.13. The State of Nevada, in its continuing efforts to reduce solid waste and to further recycling efforts, requests that applications, to the extent possible and practical:

- 5.1.13.1. Be submitted on recycled paper;
- 5.1.13.2. Not include pages of unnecessary advertising;
- 5.1.13.3. Be printed on both sides of each sheet of paper (except when a new section begins);
- 5.1.13.4. Follow strict definition of Non-Identified response when directed; and
- 5.1.13.5. Be contained in re-usable binders as opposed to spiral or glued bindings.

5.1.14. For purposes of addressing questions concerning this application, submit questions to [medicalmarijuana@health.nv.gov](mailto:medicalmarijuana@health.nv.gov) no later than 2:00 P.M. on 6/20/2014. Calls must be directed to the phone number provided in this application. No questions will be addressed after this date. Upon issuance of this request for application, other employees and representatives of the agencies identified in the application will not answer questions or otherwise discuss the contents of this application with any other prospective applicants or their representatives.

## 5.2. PART I – IDENTIFIED CRITERIA RESPONSE

The IDENTIFIED CRITERIA RESPONSE must include:

One (1) original copy marked “MASTER”

Three (3) identical copies

The response must have the tabbed sections as described below:

### 5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Medical Marijuana Establishment Registration Certificate
Application:	
Applicant Name:	
Address:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM

### 5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

### 5.2.3. Tab III – Applicant Information Sheet

The completed Applicant Information Sheet with an original signature by the contact person for providing information, signing documents, or ensuring actions are taken as per Section 23 of LCB File No. R004-14A must be included in this tab. (Page 2)

### 5.2.4. Tab IV – Medical Marijuana Establishment Registration Certificate Application

The completed Medical Marijuana Establishment Registration Certificate Application with original signatures must be included in this tab. (Attachment A)

### 5.2.5. Tab V – Multi-Establishment Limitation form

If applicable, a copy of the multi-establishment limitation form must be included in this tab. If not applicable, please insert a plain page with the words “**Not applicable.**” (Attachment G).

5.2.6. **Tab VI – Identifier Legend**

A copy of the Identifier legend must be included in this tab. If not applicable, please insert a plain page with the words “Not Applicable” (Attachment H).

5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State**

Documentation that the applicant has registered as the appropriate type of business with the Secretary of State.

5.2.8. **Tab VIII – Confirmation of the ownership or authorized use of the property as a medical marijuana establishment**

5.2.8.1. A copy of property owner’s approval for use form (Attachment F).

5.2.8.2. If the applicant has executed a lease or owns the proposed property, a copy of the lease or documentation of ownership.

A copy of the property owner’s approval for use form and lease or documentation of ownership must be included in this tab.

5.2.9. **Tab IX– Documentation from a financial institution in this state, or in any other state or the District of Columbia, which demonstrates:**

5.2.9.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and

5.2.9.2. The source of those liquid assets.

Documentation demonstrating the liquid assets and the source of those liquid assets must be included in this tab.

*Please note: If applying for more than one medical marijuana establishment registration certificate: available funds must be shown for each establishment application.*

5.2.10. **Tab X – Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.**

Evidence of taxes paid and other beneficial financial contributions made must be included in this tab.

5.2.11. **Tab XI – The description of the proposed organizational structure of the proposed medical marijuana establishment and information concerning each Owner, Officer and Board Member of the proposed medical marijuana establishment.**

- 5.2.11.1. An organizational chart showing all owners, officers, and board members of the medical marijuana establishment, including percentage of ownership for each individual.
- 5.2.11.2. The owner, officer and board member information form must be completed for each individual named in this application (Attachment C).
- 5.2.11.3. An owner, officer and board member Attestation Form must be completed for each individual named in this application (Attachment B).
- 5.2.11.4. A Child Support Verification Form for each owner, officer and board member must be completed for each individual named in this application (Attachment D).
- 5.2.11.5. A narrative description, not to exceed 750 words, demonstrating the following:
  - 5.2.11.5.1. Past experience working with governmental agencies and highlighting past community involvement.
  - 5.2.11.5.2. Any previous experience at operating other businesses or nonprofit organizations.
  - 5.2.11.5.3. Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions.
  - 5.2.11.5.4. A resume, including educational achievements, for each owner, officer and board member must be completed for each individual named in this application.
- 5.2.11.6. A Request and Consent to Release Application Form for Medical Marijuana Establishment Registration Certificate(s) for each owner, officer and board member may be completed for each individual named in this application (Attachment E).
- 5.2.11.7. Documentation that fingerprint cards have been submitted to the Central Repository for Nevada Records of Criminal History.

The organizational chart, owner, officer and board member information form(s), attestation form(s), resume(s), child support verification forms(s), narrative description(s), request and consent to release application form, as applicable, and fingerprint documentation must be included in this tab.

**5.2.12. Tab XII – A financial plan which includes:**

- 5.2.12.1. Financial statements showing the resources of the applicant(s), both liquid and illiquid.
- 5.2.12.2. If the applicant is relying on money from an owner, officer or board member, or any other source, evidence that the person has

unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant.

- 5.2.12.3. Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

The financial plan must be included in this tab.

- 5.2.13. **Tab XIII** -- If a local government in which a proposed medical marijuana establishment will be located has not enacted zoning restrictions or the applicant is not required to secure approval that the applicant is in compliance with such restrictions:

- 5.2.13.1. A professionally prepared survey demonstrating that the applicant has satisfied all the requirements of NRS 453A.322(3)(a)(2)(II).

A professionally prepared survey must be included in this tab. If not applicable, please insert a plain page stating "**Not applicable.**"

- 5.2.14. Included with this packet - the \$5,000.00 application fee as per Section 26(1) of LCB File No. R004-14A

*Please note: Cashier's checks and money orders (made out to the "Nevada Division of Public and Behavioral Health") will be accepted. All payments of money in an amount of \$10,000 or more must be made by any method of electronic funds transfer of money allowed. The electronic payment must be credited to the State of Nevada on or before the date such payment is due.*

### 5.3. **PART II –NON-IDENTIFIED CRITERIA RESPONSE**

The NON-IDENTIFIED CRITERIA RESPONSE must include:

One (1) original copy marked "MASTER"

Three (3) original copies marked "Non-Identified Criteria Response"

*Please note: The content of this response must be in a **non-identified** format. The **Identifier Legend Form (Attachment H)** must be used to non-identify the content of the response.*

The response must have the tabbed sections as described below:

- 5.3.1. **Tab I – Title Page**

The title page must include the following:

*Please note: Title page will be removed for evaluation and does not require non-identification.*

<b>Part II –Non-Identified Criteria Response</b>	
Application Title:	A Medical Marijuana Establishment Registration Certificate
Application:	
Applicant Name:	
Address:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM

### 5.3.2. **Tab II – Table of Contents**

An accurate table of contents must be provided in this tab.

### 5.3.3. **Tab III – Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including, without limitation:**

*Please note: The content of this response must be in a non-identified format*

#### 5.3.3.1. Building and Construction plans with supporting details.

*Please note: The size or square footage of the proposed establishment must include the maximum size of the proposed operation per the lease and/or property ownership. The start-up plans and potential expansion must be clearly stated to prevent needless misunderstandings and surrendering of certification.*

Non-identified Building and Construction plans with supporting details must be included in this tab.

### 5.3.4. **Tab IV – Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including, without limitation:**

*Please note: The content of this response must be in a non-identified format*

#### 5.3.4.1. A non-identified plan for testing and verifying medical marijuana.

#### 5.3.4.2. A non-identified transportation plan.

#### 5.3.4.3. Non-identified procedures to ensure adequate security including, without limitation, measures for building security.

#### 5.3.4.4. Non-identified procedures to ensure adequate security including, without limitation, measures for product security.

Non-identified plans for testing medical marijuana, transportation, and building and product security must be included in this tab.

5.3.5. **Tab V** -- A plan which includes:

*Please note: The content of this response must be in a **non-identified** format*

5.3.5.1. A non-identified description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana cardholders

5.3.5.2. A non-identified description of the inventory control system of the proposed medical marijuana establishment.

*Please note: Applicants must demonstrate a system to include thorough tracking of product movement and sales. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale, as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Division with comprehensive knowledge of an establishment's inventory.*

The plan for the operating procedures for the electronic verification system and the inventory control system must be included in this tab and must be in a non-identifying format.

5.3.6. **Tab VI** -- Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include, without limitation:

*Please note: The content of this response must be in a **non-identified** format*

5.3.6.1. A non-identified detailed budget for the proposed medical marijuana establishment, including pre-opening, construction and first year operating expenses.

5.3.6.2. A non-identified operations manual that demonstrates compliance with applicable statutes and regulations.

5.3.6.3. A non-identified education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment.

5.3.6.4. A non-identified plan to minimize the environmental impact of the proposed establishment.

The plan to staff, educate and manage the proposed medical marijuana establishment must be included in this tab and must be non-identified.

5.3.7. **Tab VII** – A proposal demonstrating the following:

*Please note: The content of this response must be in a **non-identified** format*

- 5.3.7.1. The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located.
- 5.3.7.2. The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana.

The likely impact and how the establishment will meet the needs of persons who are authorized to engage in the medical use of marijuana must be included in this tab and must be non-identified.

#### 5.4. **Part III – CD Response**

The CD portion of the application must include:

5.4.1. Four (4) Identified Criteria Response CDs

5.4.2. Four (4) Non-Identified Criteria Response CDs

- 5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response
- 5.4.2.2. All electronic files must be saved in “PDF” format, with the following file names:
- 5.4.2.2.1. Part I – Identified Criteria Response
- 5.4.2.2.2. Part II – Non-Identified Criteria Response
- 5.4.2.3. The CDs must be packaged in a case and clearly labeled as follows:

CDs	
Application	A Medical Marijuana Establishment Registration Certificate
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response Part II – Non-Identified Criteria Response



## 5.5. APPLICATION PACKAGING

- 5.5.1. If the separately sealed Identified Criteria Response, Non-Identified Criteria Response and CDs marked as required, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
For:	A Medical Marijuana Establishment Registration Certificate
Applicant's Name:	

- 5.5.2. Applications must be filed or accepted at 4150 Technology Way, Suite 104. Applications shall be deemed filed or accepted on the date of the postmark dated by the post office on the package in which it was mailed in accordance with NRS 238.100.
- 5.5.3. The Division will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.4. Email, facsimile, electronic or telephone Applications will **NOT** be considered.
- 5.5.5. The Identified Criteria Response shall be submitted to the Division in a sealed package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	PART I -- Identified Criteria Response
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

- 5.5.6. The Non-Identified Criteria Response shall be submitted to the Division in a sealed package and be clearly marked as follows:

<b><i>Medical Marijuana Establishment (MME) Program</i></b> <b><i>Division of Public and Behavioral Health</i></b> <b><i>4150 Technology Way, Suite 104</i></b> <b><i>Carson City, NV 89706</i></b>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	PART II – Non-Identified Criteria Response
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

- 5.5.7. The CDs shall be submitted to the Division in a sealed package and be clearly marked as follows:

<b><i>Medical Marijuana Establishment (MME) Program</i></b> <b><i>Division of Public and Behavioral Health</i></b> <b><i>4150 Technology Way, Suite 104</i></b> <b><i>Carson City, NV 89706</i></b>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	CDs
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

## 6. APPLICATION EVALUATION

- 6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453A and LCB File No. R004-14A based upon the following criteria and point values:

	Merit Criteria	Descriptive Elements	Points
		<i>Listed below are certain elements that must be included in the response to the respective Merit Criteria. However, applicants should provide additional information that helps to demonstrate how the applicant uniquely meets the specified Merit Criteria in addition to the descriptive elements specified below.</i>	
I	NRS 453A.328(1) The total financial resources of the applicant, both liquid and illiquid	<p>A financial plan which includes:</p> <ul style="list-style-type: none"> <li>Financial statements showing the resources of the applicant(s), both liquid and illiquid.</li> <li>If the applicant is relying on money from an owner, officer or board member, or any other source, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant and the applicant obtains the necessary local government approvals to operate the establishment.</li> <li>Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.</li> </ul> <p>Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include:</p> <ul style="list-style-type: none"> <li>A detailed budget for the proposed establishment, including pre-opening, construction and first-year operating expenses.</li> </ul>	40
II	<p>NRS 453A.328(2) The previous experience of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment at operating other businesses or nonprofit organizations</p> <p>453A.328(3) The educational achievements of the persons who are proposed to be owners, officers or board members of the</p>	<p>An organizational chart showing all Owners, Officers and Board Members of the medical marijuana establishment, including percentage of ownership for each individual and a short description of the proposed organizational structure.</p> <p>A narrative description, not to exceed 750 words, demonstrating the following:</p> <ul style="list-style-type: none"> <li>Any previous experience at operating other businesses or nonprofit organizations.</li> <li>Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions.</li> </ul>	50

	<p>proposed medical marijuana establishment</p> <p>453A.328(4) Any demonstrated knowledge or expertise on the part of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment with respect to the compassionate use of marijuana to treat medical conditions</p>	<ul style="list-style-type: none"> <li>• A resume, including educational achievements, for each owner, officer and board member.</li> </ul>	
III	<p>453A.328(5) Whether the proposed location of the proposed medical marijuana establishment would be convenient to serve the needs of persons who are authorized to engage in the medical use of marijuana</p>	<p>Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property as required by NRS 453A.322(3)(a)(2)(IV), on a form prescribed by the Division.</p>	20
IV	<p>453A.328(6) The likely impact of the proposed medical marijuana establishment on the community in which it is proposed to be located</p>	<p>A proposal demonstrating:</p> <ul style="list-style-type: none"> <li>• Past experience working with governmental agencies and highlighting past community involvement.</li> <li>• The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located.</li> <li>• The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana.</li> </ul>	20
V	<p>453A.328(7) The adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana</p>	<p>Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including, without limitation:</p> <ul style="list-style-type: none"> <li>• Building and Construction Plans with supporting details.</li> </ul>	20
VI	<p>453A.328(8) Whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale</p>	<p>Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including, without limitation:</p> <ul style="list-style-type: none"> <li>• A plan for testing and verifying medical marijuana.</li> <li>• A transportation plan.</li> <li>• Procedures to ensure adequate security measures including, without limitation, for building security.</li> <li>• Procedures to ensure adequate security including, without limitation, measures for product security.</li> </ul>	75

		<p>Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include, without limitation:</p> <ul style="list-style-type: none"> <li>• An operations manual that demonstrates compliance with applicable statutes and regulations.</li> <li>• An education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment.</li> <li>• A plan to minimize the environmental impact of the proposed establishment.</li> </ul> <p>A plan which includes:</p> <ul style="list-style-type: none"> <li>• A description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana cardholders.</li> <li>• A description of the inventory control system of the proposed medical marijuana establishment to satisfy the requirements of sub-subparagraph (II) of subparagraph (3) of paragraph (a) of subsection 3 of NRS 453A.322.</li> </ul>	
VII	453A.328(9)The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment	Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
Application Total			250
		Review results of background check(s), Applicant has until the end of the 90-day application period to resolve any background check information which would cause the application to be rejected.	Unweighted

- 6.2. Pursuant to subsection 1 of Section 28 of LCB File No. R004-14A, if, within 10 business days after the date on which the Division begins accepting applications in response to a request for applications issued pursuant to Section 25 of LCB File No. R004-14A, the Division receives more than one application and the Division determines that more than one of the applications is complete and in compliance with LCB File No. R004-14A and Chapter 453A of NRS, the Division will rank the applications, within each applicable local governmental jurisdiction for any applicants which are in a jurisdiction that limits the number of a type of medical marijuana establishment and statewide for each applicant which is in a jurisdiction that does not specify a

limit, in order from first to last based on compliance with the provisions of Chapter 453A of NRS and LCB File No. R004-14A and on the content of the applications as it relates to:

- 6.2.1. Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property as required by sub-subparagraph (IV) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322
  - 6.2.2. Evidence that the applicant controls not less than \$250,000 in liquid assets to cover the initial expenses of opening the proposed medical marijuana establishment and complying with the provisions of NRS 453A.320 to 453A.370, inclusive as required by sub-subparagraph (III) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322
  - 6.2.3. Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment as described in subsection 9 of NRS 453A.328 and pursuant to the provisions of subsection 4 of section 26 of LCB File No. R004-14A
  - 6.2.4. The description of the proposed organizational structure of the proposed medical marijuana establishment, and information concerning each Owner, Officer and Board Member of the proposed medical marijuana establishment, including, without limitation, the information provided pursuant to subsections 5 and of Section 26 of LCB File No. R004-14A
- 6.3. Pursuant to subsection 2 of Section 28 of LCB File No. R004-14A, an application that has not demonstrated a sufficient response related to the criteria set forth in 6.2.1, 6.2.2, 6.2.3 and 6.2.4, will not be further evaluated, and the Division will not issue a medical marijuana establishment registration certificate to that applicant.
- 6.4. Pursuant to subsection 3 of Section 28 of LCB File No. R004-14A, if the Division receives any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed medical marijuana establishment that disqualify that person from being qualified to serve in that capacity, the Division will provide notice to the applicant and give the applicant an opportunity to revise its application. If a person who is disqualified from serving as an owner, officer or board member remains on the application as a proposed owner, officer or board member 90 days after the date on which the Division initially received the application, the Division may disqualify the application.
- 6.5. The Division may contact anyone referenced in any information provided for the Owners, Officers and Board Members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and seek and review any other information deemed pertinent to the evaluation process.
- 6.6. The Division shall issue provisional medical marijuana establishment registration certificates in accordance with NRS 453A.326 (3) and Sections 29, 30 and 31 of LCB File No. R004-14A to the highest ranked applicants up to the designated number of registration certificates the Division

plans to issue.

- 6.7. Pursuant to subsection 2 of Section 29 of LCB File No. R004-14A, if two or more applicants have the same total number of points for the last application being awarded a provisional medical marijuana establishment registration certificate, the Division will select the applicant which has scored the highest number of points as it relates to the proposed organizational structure of the proposed medical marijuana establishment and the information concerning each owner, officer and board member of the proposed medical marijuana establishment, including, without limitation, the information provided pursuant to subsections 5 and 6 of Section 26 of LCB File No. R004-14A.
- 6.8. In accordance with Section 30 of LCB File No. R004-14A, if the Division receives only one response in a specific local governmental jurisdiction which limits the number of a type of establishment to one, or statewide, if the applicant is in a jurisdiction which does not limit the number of a type of medical marijuana establishment, and the Division determines that the application is complete and in compliance with LCB File No. R004-14A and Chapter 453A of the NRS, the Division will issue a provisional medical marijuana establishment registration certificate to that applicant to in accordance with subsection 3 of NRS 453.326.
- 6.9. Pursuant to subsection 1 of Section 31 of LCB File No. R004-14A, the issuance of a medical marijuana establishment registration certificate by the Division is provisional and not an approval to begin business operations, until such time as:
- 6.9.1. The medical marijuana establishment is in compliance with all applicable local governmental ordinances and rules; and
  - 6.9.2. The local government has issued a business license, or otherwise approved the applicant, for the operation of the medical marijuana establishment.
- 6.10. Pursuant to subsection 2 of Section 31 of LCB File No. R004-14A, if the local government for a jurisdiction in which a medical marijuana establishment is located does not issue business licenses and does not approve or disapprove medical marijuana establishments in its jurisdiction, a medical marijuana establishment registration certificate becomes an approval to begin operations as a medical marijuana establishment when the medical marijuana establishment is in compliance with all applicable local governmental ordinances and rules.

## 7. MEDICAL MARIJUANA ESTABLISHMENT APPLICATION CHECKLIST

This checklist is provided for the applicant's convenience only and identifies documents that must be submitted with each package in order to be considered complete.

Part I - Identified Criteria Response:	Completed
Applicant Information Sheet	
Medical Marijuana Establishment Registration Certificate Application (Attachment A).	

Multi-Establishment Limitation Form; if applicable (Attachment G).	
Identifier Legend (Attachment H)	
Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business.	
<p>Confirmation of the ownership or authorized use of the property as a medical marijuana establishment</p> <ul style="list-style-type: none"> <li>• A copy of Property Owner's Approval for Use Form (Attachment F).</li> <li>• If the applicant has executed a lease or owns the proposed property, a copy of the lease or documentation of ownership.</li> </ul>	
<p>Documentation from a financial institution in this state, or in any other state or the District of Columbia, which demonstrates:</p> <ul style="list-style-type: none"> <li>• That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets.</li> <li>• The source of those liquid assets.</li> </ul> <p><i>Please note: If applying for more than one Medical Marijuana establishment certificate; available funds must be shown for each establishment application.</i></p>	
Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be Owners, Officers or Board Members of the proposed establishment.	
<p>A financial plan which includes:</p> <ul style="list-style-type: none"> <li>• Financial statements showing the resources of the applicant, both liquid and illiquid</li> <li>• If the applicant is relying on money from an Owner, Operator or Board Member, or any other source, evidence that such person has unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant.</li> <li>• Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.</li> </ul>	
<p>\$5,000.00 application fee as per Section 26(1) of LCB File No. R004-14A</p> <p><i>Please note: Cashier's checks and money orders (made out to the "Nevada Division of Public and Behavioral Health") will be accepted. All payments of money in an amount of \$10,000 or more must be made by any method of electronic funds transfer of money allowed. The electronic payment must be credited to the State of Nevada on or before the date such payment is due.</i></p>	
<b>To be included for each Owner, Officer and Board Member of the proposed medical marijuana establishment:</b>	
Owner, Officer, and Board Member Attestation Form (Attachment B).	
Owner, Officer, and Board Member Information Form (Attachment C).	
A narrative description, not to exceed 750 words, demonstrating:	



<ul style="list-style-type: none"> <li>• Past experience working with governmental agencies and highlighting past community involvement.</li> <li>• Any previous experience at operating other businesses or non-profit organizations.</li> <li>• Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions.</li> <li>• A resume, including educational achievements.</li> </ul>	
A Request and Consent to Release Form (Attachment E).	
Documentation that fingerprint cards have been submitted to Nevada's Criminal History Repository.	
<b>Part II - Non-Identified Criteria Response:</b> <i>Please note: All of the following must be submitted in a non-identified format.</i>	Completed
Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including: <ul style="list-style-type: none"> <li>• Building and construction plans with all supporting details</li> </ul>	
Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including: <ul style="list-style-type: none"> <li>• A plan for testing and verifying medical marijuana.</li> <li>• A transportation plan.</li> <li>• Procedures to ensure adequate security measures for building security.</li> <li>• Procedures to ensure adequate security measures for product security.</li> </ul>	
A plan which includes, <ul style="list-style-type: none"> <li>• A description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana card holders.</li> <li>• A description of the inventory control system of the proposed medical marijuana establishment</li> </ul>	
Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> <li>• A detailed budget for the proposed establishment, including pre-opening, construction and first year operating expenses.</li> <li>• An operations manual that demonstrates compliance with the applicable statutes and regulations.</li> <li>• An education plan which must include providing educational materials to the staff of the proposed establishment.</li> <li>• A plan to minimize the environmental impact of the proposed establishment.</li> </ul>	
An application demonstrating: <ul style="list-style-type: none"> <li>• The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located.</li> <li>• The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana.</li> </ul>	

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*

TRACEY D. GREEN, MD  
*Chief Medical Officer*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**ATTACHMENT A - MEDICAL MARIJUANA ESTABLISHMENT APPLICATION**

BRIAN SANDOVAL  
*Governor*  
  
MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*  
  
TRACEY D. GREEN, MD  
*Chief Medical Officer*

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MEDICAL MARIJUANA ESTABLISHMENT APPLICATION - (Attachment A)

GENERAL INFORMATION

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility <input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: <small>*This must be a Nevada address and cannot be a P.O. Box.</small>			
City:	County:	State:	Zip Code:
Proposed Hours of Operation: Sunday      Monday      Tuesday      Wednesday      Thursday      Friday      Saturday			

APPLYING ENTITY INFORMATION

Applying Entity's Name:		
Business Organization: <input type="checkbox"/> Individual <input type="checkbox"/> Corp. <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Assoc. /Coop. <input type="checkbox"/> Other specify:		
Telephone #:	E-Mail Address:	
State Business License #:		Expiration Date:
Mailing Address:		
City:	State:	Zip Code:

DESIGNEE INFORMATION

List the name of the individual designated to submit establishment agent registry ID card applications on behalf of the medical marijuana establishment.

Last Name:	First Name:	MI:
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BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
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**MEDICAL MARIJUANA ESTABLISHMENT OWNER (OR), OFFICER (OF), AND BOARD MEMBER (BM) NAMES**

For each Owner, Officer, and Board Member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form.

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of "medical" marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical Marijuana Act, NRS 453A, NAC 453A and LCB File No. R004-14A. Any failure to comply with these requirements may result in revocation of the medical marijuana agent identification card or medical marijuana establishment registration certificate issued by the Division.

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



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*Administrator*

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The State of Nevada, including but not limited to the employees of the Division, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of medical marijuana.

If the applicant is issued a medical marijuana establishment provisional registration certificate, the applicant agrees to not operate the establishment until the establishment is inspected and the applicant obtains a medical marijuana establishment registration certificate authorizing operation of the establishment.

I attest that the information provided to the Division for this medical marijuana establishment registration certificate application is true and correct.

Print Name	Title
Signature	Date Signed
Print Name	Title
Signature	Date Signed

BRIAN SANDOVAL  
*Governor*

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*Director*

STATE OF NEVADA



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**ATTACHMENT B – OWNER, OFFICER, AND BOARD MEMBER ATTESTATION  
FORM**

BRIAN SANDOVAL  
*Governor*  
  
MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*  
  
TRACEY D. GREEN, MD  
*Chief Medical Officer*

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**OWNER, OFFICER, AND BOARD MEMBER ATTESTATION FORM -- (Attachment B)**

I, \_\_\_\_\_,

PRINT NAME

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS Chapter 453A;  
and,

I agree that the Division may investigate my background information by any means feasible  
to the Division; and,

I will not divert marijuana to any individual or person who is not allowed to possess  
marijuana pursuant NRS Chapter 453A; and,

All information provided is true and correct.

\_\_\_\_\_  
Signature of Owner, Officer, or Board Member

\_\_\_\_\_  
Date Signed

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of Notarial Officer

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLBEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*

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ATTACHMENT C – OWNER, OFFICER, AND BOARD MEMBER INFORMATION  
FORM



BRIAN SANDOVAL  
Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



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**OWNER, OFFICER, AND BOARD MEMBER INFORMATION FORM - (Attachment C)**

Provide the following information for each Owner, Officer, and Board Member listed on the Medical Marijuana Establishment application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:			
Residence Address:			
City:	County:	State:	Zip:
A short description of the role the individual will serve in for the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a medical marijuana establishment that has had their establishment registration certificate revoked? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Is this individual a physician currently providing written certifications for qualifying patients? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Is this individual employed by or a contractor of the Division? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Has a copy of this individual's signed and dated Medical Marijuana Dispensary Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			
If applicable, what is this individual's designated caregiver or dispensary agent registry identification number if issued within the previous six months?			
Has a copy of this individual's fingerprints on a fingerprint card been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Has a copy of this individual's signed and dated Child Support Verification Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			

BRIAN SANDOVAL  
*Governor*  
MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



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*Chief Medical Officer*

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**ATTACHMENT D – CHILD SUPPORT VERIFICATION FORM**

BRIAN SANDOVAL  
Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



RICHARD WHITLEY, MS  
Administrator

TRACEY D. GREEN, MD  
Chief Medical Officer

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**CHILD SUPPORT VERIFICATION FORM -- (Attachment D)**

You are required to complete this Child Support Statement and return it with your application. Failure to submit a fully completed and signed current Child Support Statement will result in the application for a medical marijuana establishment certificate being denied.

- ☐ I am not subject to a court order for the support of a child.
- ☐ I am subject to a court order for the support of one or more children and am in compliance with the order or am in compliance with a plan approved by the District Attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.
- ☐ I am subject to a court order for the support of one or more children and am not in compliance with the order of a plan approved by the District Attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

Applicant's Name

Applicant's Social Security Number

Applicant's Signature

Date

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of Notarial Officer

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



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**ATTACHMENT E – REQUEST AND CONSENT TO RELEASE APPLICATION FORM**

BRIAN SANDOVAL  
Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



RICHARD WHITLEY, MS  
Administrator

TRACEY D. GREEN, MD  
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**Request and Consent to Release Application**  
**Form for Medical Marijuana Establishment Registration Certificate(s) - (Attachment E)**

I, \_\_\_\_\_, am the duly authorized designee of

\_\_\_\_\_ to represent and interact with the Division of Public and Behavioral Health (Division) on all matters and questions in relation to the application for a Nevada Medical Marijuana Establishment Registration Certificate(s). I understand that NRS 453A.700 makes all applications submitted to the Division confidential but that local government authorities including, but not limited to, the licensing or zoning departments of cities, towns or counties may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Information I hereby acknowledge and agree that the State of Nevada, its subdivisions, including the Division of Public and Behavioral Health and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its subdivisions cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

\_\_\_\_\_  
Signature of Requestor/Applicant or Designee

Date: \_\_\_\_\_

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of Notarial Officer

**BRIAN SANDOVAL**  
*Governor*  
**MICHAEL J. WILLDEN**  
*Director*

STATE OF NEVADA



**RICHARD WHITLEY, MS**  
*Administrator*  
**TRACEY D. GREEN, MD**  
*Chief Medical Officer*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**  
4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**ATTACHMENT F – PROPERTY OWNER APPROVAL FOR USE FORM**

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*

TRACEY D. GREEN, MD  
*Chief Medical Officer*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

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Carson City, Nevada 89706  
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**PROPERTY OWNER APPROVAL FOR USE FORM – (Attachment F)**

TO BE COMPLETED BY THE OWNER OF THE PHYSICAL ADDRESS OF THE PROPOSED MEDICAL MARIJUANA ESTABLISHMENT.			
Name of Individual or Entity Applying for a Medical Marijuana Establishment Registration Certificate:			
Name of Owner of the Physical Address of the Proposed Medical Marijuana Establishment:			
Physical Address and Name of Proposed Medical Marijuana Establishment: <small>*This must be a Nevada address and cannot be a P.O. Box</small>			
City:	County:	State:	Zip Code:
Legal Description of the Property:			

☐ The individual or entity applying for a Medical Marijuana Establishment Registration Certificate is the owner of the physical address of the proposed Medical Marijuana Establishment.

OR

☐ The owner of the physical address of the proposed Medical Marijuana Establishment gives permission to the individual or entity applying for a Medical Marijuana Establishment Registration Certificate to operate a Medical Marijuana Establishment at the physical address.

\_\_\_\_\_  
PROPERTY OWNER SIGNATURE

\_\_\_\_\_  
DATE SIGNED

\_\_\_\_\_  
PROPERTY OWNER NAME

\_\_\_\_\_  
TITLE

**BRIAN SANDOVAL**  
*Governor*

**MICHAEL J. WILLDEN**  
*Director*

**STATE OF NEVADA**



**RICHARD WHITLEY, MS**  
*Administrator*

**TRACEY D. GREEN, MD**  
*Chief Medical Officer*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**ATTACHMENT G -- MULTI-ESTABLISHMENT LIMITATIONS FORM**



BRIAN SANDOVAL  
Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



RICHARD WHITLEY, MS  
Administrator

TRACEY D. GREEN, MD  
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

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Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**MULTI-ESTABLISHMENT LIMITATIONS FORM -- (Attachment G)**

NRS 453A.324 places a limitation on the total number of certificates that can be issued within each county, and NRS 453A.326 places limitations on the number of medical marijuana dispensaries located in any one governmental jurisdiction and a limitation on the number of certificates issued to any one person. Due to these limitations, please list below all applications submitted from this business organization and/or person as identified in the Medical Marijuana Establishment Owner, Officer, and Board Member names section of Attachment A.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

**Please list in order of preference for approval (use as many sheets as needed).**

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

**BRIAN SANDOVAL**  
*Governor*

**MICHAEL J. WILLEN**  
*Director*

STATE OF NEVADA



**RICHARD WHITLEY, MS**  
*Administrator*

**TRACEY D. GREEN, MD**  
*Chief Medical Officer*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

**ATTACHMENT H – IDENTIFIER LEGEND FORM**

**MICHAEL J. WILLDEN**  
*Director*

**TRACEY D. GREEN, MD**  
*Chief Medical Officer*

Telephone: (775) 684-4200 - Fax: (775) 684-4211

In a Non-Identified Criteria response, when a specific person or company is referenced, the identity must remain confidential. A person must be addressed through their position, discipline, job title or assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H), to be submitted in the Identified Criteria response section (use as many sheets as needed).

[illegible]

# EXHIBIT 2

  
CLERK OF THE COURT

1 **NOTC**  
James E. Shapiro, Esq.  
2 Nevada Bar No. 7907  
Sheldon A. Herbert, Esq.  
3 Nevada Bar No. 5988  
**SMITH & SHAPIRO, PLLC**  
4 2520 St. Rose Parkway, Suite #220  
Henderson, NV 89074  
5 (702) 318-5033  
*Attorneys for Plaintiff*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 GB SCIENCES NEVADA, LLC, a Nevada limited  
9 liability company,

10 Plaintiff,

11 vs.

12 STATE OF NEVADA, DIVISION OF PUBLIC  
AND BEHAVIORAL HEALTH OF THE  
13 DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; CITY OF LAS VEGAS, a municipal  
14 corporation and political subdivision of the State of  
Nevada; DESERT AIRE WELLNESS, LLC, a  
15 Nevada limited liability company; DOES 1-10, and  
ROE ENTITIES 1-100, inclusive,

16 Defendants.

17 DESERT AIRE WELLNESS, LLC, a Nevada  
18 limited liability company,

19 Counterclaimant,

20 vs.

21 GB SCIENCES NEVADA, LLC, a Nevada limited  
22 liability company,

23 Counterdefendant.

Case No. A-15-728448-C  
Dept. No. I

Date: March 15, 2016  
Time: 9:00 a.m

24 **NOTICE OF ENTRY OF ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR**  
25 **SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR**  
26 **SUMMARY JUDGMENT**

27 PLEASE TAKE NOTICE that an **ORDER RE: GB SCIENCES NEVADA, LLC'S**  
28 **MOTION FOR SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S**

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, Nevada 89074  
(702) 318-5033

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, Nevada 89074  
(702) 318-5033

1 **COUNTERMOTION FOR SUMMARY JUDGMENT** was entered in the above-entitled matter on  
2 the 28<sup>th</sup> day of April, 2016, a copy of which is attached hereto as Exhibit 1.

3  
4 DATED this 28<sup>nd</sup> day of April, 2016.

5  
6 **SMITH & SHAPIRO, PLLC**

7 /s/ James E. Shapiro  
8 James E. Shapiro, Esq.  
9 Nevada Bar No. 7907  
10 Sheldon A. Herbert, Esq.  
11 Nevada Bar No. 5988  
12 2520 St. Rose Parkway, Suite #220  
13 Henderson, NV 89074  
14 *Attorneys for Plaintiff*

15 **CERTIFICATE OF SERVICE**

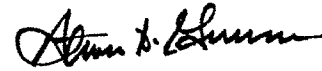
16 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 28<sup>th</sup> day  
17 of April, 2016, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER**  
18 **RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT**  
19 **AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**, by e-serving  
20 a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line,  
21 electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer  
22 Togliatti, on May 9, 2014.

23  
24  
25 /s/ Ashley R. Houston  
26 An employee of SMITH & SHAPIRO, PLLC  
27  
28

Exhibit “1”

Exhibit “1”

ORIGINAL



CLERK OF THE COURT

1 **ORDER**

2 JAMES E. SHAPIRO, ESQ.  
3 Nevada Bar No. 7907  
4 Sheldon A. Herbert, Esq.  
5 Nevada Bar No. 5988  
6 **SMITH & SHAPIRO, PLLC**  
7 2520 St. Rose Parkway, Suite 220  
8 Henderson, NV 89074  
9 (702) 318-5033  
10 *Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

8 GB SCIENCES NEVADA, LLC, a Nevada  
9 limited liability company,

10 Plaintiff,

11 vs.

12 STATE OF NEVADA, DIVISION OF PUBLIC  
13 AND BEHAVIORAL HEALTH OF THE  
14 DEPARTMENT OF HEALTH AND HUMAN  
15 SERVICES; CITY OF LAS VEGAS, a municipal  
16 corporation and political subdivision of the State  
17 of Nevada; DESERT AIRE WELLNESS, LLC, a  
18 Nevada limited liability company; DOES 1-10,  
19 and ROE ENTITIES 1-100, inclusive,

20 Defendants.

21 DESERT AIRE WELLNESS, LLC, a Nevada  
22 limited liability company,

23 Counterclaimant,

24 vs.

25 GB SCIENCES NEVADA, LLC, a Nevada  
26 limited liability company,

27 Counterdefendant.

Case No. A-15-728448-C  
Dept. No. 1

Date: March 15, 2016  
Time: 9:00 a.m.

28 **ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT;**  
**DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**

29 THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's  
30 ("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant DESERT AIRE  
31 WELLNESS, LLC ("Desert Aire") Countermotion for Summary Judgment ("Countermotion");

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O:(702)318-5033 F:(702)318-5034



1 Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC;  
2 Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the  
3 "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General  
4 through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant Desert Aire,  
5 having appeared by and through its attorneys of record, MICHAEL H. SINGER, LTD., Defendant  
6 CITY OF LAS VEGAS having failed to appear or file any briefs regarding the matter<sup>1</sup>, the Court  
7 having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the  
8 Court having stated its findings and conclusions on the record, the Court being fully advised in the  
9 premises, and good cause appearing, NOW THEREFORE, THE COURT FINDS AND  
10 CONCLUDES:

11 **UNDISPUTED FACTS**

12 **A. BACKGROUND.**

13 1. In 2013, Senate Bill 374 was passed which provided for the registration of medical  
14 marijuana establishments authorized to cultivate or dispense marijuana or manufacture edible  
15 marijuana products or marijuana-infused products for sale to persons authorized to engage in the  
16 medical use of marijuana. Senate Bill 374 was codified into N.R.S. Chapter 453A.

17 2. Under N.R.S. § 453A.320 et seq., the Division was tasked with processing and  
18 ranking applications for Medical Marijuana Establishments ("MMEs") for each local jurisdiction in  
19 Nevada.

20 3. There were five types of MME's, including Dispensaries, Cultivation Facilities, and  
21 Production Facilities. The MME at issue in this lawsuit is a Dispensary.

22 4. The City of Las Vegas was allocated twelve Dispensary provisional certificates.

23 5. The Division, as well as the local jurisdiction, played a role in the ultimate licensing  
24 of MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,  
25 zoning and proximity to other business or facilities (the "Local Application Process") while the

26  
27 <sup>1</sup> Plaintiff previously notified the Court that Plaintiff was no longer seeking any claims against the City of Las Vegas as  
28 the Plaintiff's claims had been rendered moot. Notwithstanding, the City of Las Vegas was included as an interested  
party to give them an opportunity to heard on the Plaintiff's requested relief against the State of Nevada and Desert Aire  
Wellness, LLC.

1 Division focused on public health, public safety, and marijuana as a medicine (the "Division  
2 Application Process").

3 6. In accordance with its responsibilities, the City of Las Vegas enacted Ordinance No.  
4 6321 and 6324 to establish zoning regulations, licensing regulations, and standards for MME  
5 locations.

6 7. The Division issued its application packet (the "Division Application").

7 8. While the Division was allowed to accept all applications submitted, under N.R.S. §  
8 453A.322, the Division could only issue a medical marijuana establishment registration certificate  
9 (a "Provisional Certificate") if the applicant's application included six (6) specific items and if the  
10 applicant otherwise met the requirements established by N.R.S. Chapter 453A.

11 9. One of the six (6) items required by law before the Division could issue a Provisional  
12 Certificate is found in N.R.S. § 453A.322(3)(a)(5), which states:

13 (5) If the city, town or county in which the proposed medical marijuana  
14 establishment will be located has enacted zoning restrictions, proof of licensure with  
15 the applicable local governmental authority or a letter from the applicable local  
16 governmental authority certifying that the proposed medical marijuana establishment  
17 is in compliance with those restrictions and satisfies all applicable building  
18 requirements. (NRS § 453A.322(3)(a)(5))

19 **B. DESERT AIRE'S APPLICATION.**

20 10. Plaintiff and Desert Aire were two of the 49 applicants for a Dispensary License in  
21 the City of Las Vegas.

22 11. On October 28-29, 2014, the Las Vegas City Council held a special meeting to  
23 consider each applicant for a special use permit and compliance permit for an MME Dispensary.

24 12. Prior to the October 28-29, 2014 Las Vegas City Council meeting, Desert Aire  
25 withdrew their application for a special use permit and compliance permit.

26 13. On October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the  
27 Division that Desert Aire's application for a special use permit and compliance permit from the City  
28 of Las Vegas had been withdrawn and identifying for the Division the twenty-eight (28) applicants

1 who had been granted a special use permit and compliance permit for purposes of NRS §  
2 453A.322(3)(a)(5).

3 14. The City of Las Vegas letter was intended to comply, and did comply, with NRS  
4 453A.322(3)(a)(5).

5 15. Specifically, pursuant to Las Vegas Municipal Code Section 6.95.080, the letter was  
6 to give notice to the Division, as intended in subsection 3(a)(5), as to those medical marijuana  
7 applicants which the City of Las Vegas had found to be or not to be in conformance with land use  
8 and zoning restrictions, and eligible for consideration for a business license. This letter described the  
9 applicable building requirements and zoning restrictions as outlined in the statute.

10 16. Notwithstanding, on or about November 3, 2014, the Division registered Desert Aire  
11 as a medical marijuana establishment and issued a provisional registration certificate for an MME  
12 Dispensary (the "Provisional License").

13 17. While Desert Aire subsequently obtained a special use permit, that did not occur until  
14 after November 3, 2014. Desert Aire ultimately opened for business.

15 18. At the time the Department registered Desert Aire and issued a Provisional License,  
16 Desert Aire did not meet the requirements of N.R.S. § 453A.322, which specifically permitted the  
17 Division to register a medical marijuana establishment and issue a registration certificate if the  
18 business seeking to register had completed all of the requirements of subsection 3(a), including  
19 providing a letter from the applicable local authority certifying that the proposed medical marijuana  
20 establishment is in compliance with [zoning] restrictions and satisfies all applicable building  
21 requirements.

22 19. Pursuant the plain terms of the statute, the Division should not have registered Desert  
23 Aire and issued a registration certificate as Desert Aire had not met all the requirements of the  
24 statute.

25 20. The Nevada Department of Health and Human Services should have registered and  
26 issued the registration certificate to the medical marijuana establishment to the top twelve ranked  
27 applicants which met all the requirements of the statute.

28 \\\

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O:(702)318-5033 F:(702)318-5034

## CONCLUSIONS OF LAW

1 NOW THEREFORE:

2 31. IT IS HEREBY ORDERED Plaintiffs Motion for Summary Judgment is GRANTED  
3 in part and DENIED in part.

4 32. IT IS FURTHER ORDERED that Plaintiff's Motion is GRANTED to the extent that  
5 Desert Aire should not have been registered or issued a certification of registration as a medical  
6 marijuana establishment because it had not met all the necessary requirements of 453A.322(3)(a).

7 33. IT IS FURTHER ORDERED that the Division shall rescind or withdraw the  
8 dispensary registration previously issued to Desert Aire.

9 34. IT IS FURTHER ORDERED that Plaintiff's Motion for is DENIED to the extent  
10 Plaintiff seeks the re-issue of Desert Aire's dispensary registration to Plaintiff.

11 35. IT IS FURTHER ORDERED Defendant Desert Aire's Countermotion for Summary  
12 Judgment is DENIED.

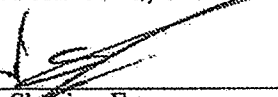
13 36. IT IS FURTHER ORDERED that there being no other unresolved claims or issues,  
14 this matter is and shall be CLOSED and this Order shall be a FINAL, APPEALABLE ORDER.

15 IT IS SO ORDERED this 26 day of April, 2016.

16   
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

20   
21 James E. Shapiro, Esq.  
22 Nevada Bar No. 7907  
23 2520 Saint Rose Parkway, Suite 220  
Henderson, Nevada 89074  
Attorneys for Plaintiff

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

1 Approved:

2 MICHAEL H. SINGER, LTD.

Approved:

ADAM PAUL LAXALT,  
Attorney General

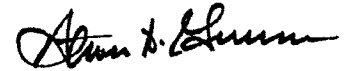


4  
5 Michael H. Singer, Esq.  
6 Nevada Bar No. 1589  
7 4475 South Pecos Rd.  
8 Las Vegas, NV 89121  
9 *Attorneys for DESERT AIRE*  
10 *WELLNESS, LLC*

Linda C. Anderson  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
*Attorneys for the STATE OF NEVADA*

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Henderson, NV 89074  
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# EXHIBIT 1



CLERK OF THE COURT

ADAM PAUL LAXALT  
Attorney General  
Linda C. Anderson  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
P: (702) 486-3420  
F: (702) 486-3871  
E-mail: landerson@ag.nv.gov

DISTRICT COURT  
CLARK COUNTY, NEVADA

GB SCIENCES NEVADA, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC  
AND BEHAVIORAL HEALTH; et. al.

Defendants.

Case No. A-15-728448-C

Dept. No. I

**STATE RESPONSE TO MOTION FOR RECONSIDERATION**

Date of Hearing: May 16, 2016

Time of Hearing: In Chambers

COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter "DIVISION"), by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy Attorney General, LINDA C. ANDERSON, and files this response to the Motion For Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment To Defendant or at a Minimum Grant a Stay Pending Appeal filed April 14, 2016.

This Court has thoroughly examined the arguments made by the Division in this matter so the Division will not repeat them in this response. However, because the Court has not yet signed an order after the ruling on March 15, 2016, the motion filed by Desert Aire Wellness will give this Court the opportunity to review the decision from their perspective for purposes of the final order. The motion highlights that consideration of the "timing" of events is critical to this decision. First, the motion raises



1 the question of whether the timing of the approval from the City of Las Vegas should have a substantive  
2 impact on the reading of the requirement from the Nevada Legislature in NRS 453A.322(3)(a)(5) that  
3 the applicant submit to the Division the following:

4 If the city, town or county in which the proposed medical marijuana establishment will  
5 be located has enacted zoning restrictions, proof of licensure with the applicable local  
6 governmental authority or a letter from the applicable local governmental authority  
certifying that the proposed medical marijuana establishment is in compliance with those  
restrictions and satisfies all applicable building requirements

7 As noted in the pleadings, neither party had approval from the local authority at the time the application  
8 was submitted to the Division. The pleadings show that Desert Aire Wellness received approval from  
9 the City of Las Vegas but not at the same time that GB Sciences did.

10 The second issue of "timing" is whether the challenge brought by GB Sciences to Desert Aire  
11 Wellness in this case is timely. Certainly the initial action in case number A-14-710597 filed on  
12 December 5, 2014, in Department 20 was timely because it was filed within 30 days of the notice of the  
13 registrations and before any medical marijuana establishment was operating. However, on April 1,  
14 2015, GB Sciences chose to dismiss Desert Aire Wellness from the litigation without prejudice and then  
15 filed a motion for summary judgment against the other Defendant Nuleaf on September 18, 2015. The  
16 motion for summary judgment was granted but the dispensary was awarded to another intervening  
17 party. GB Sciences then sought to bring Desert Aire Wellness back into the litigation in a motion filed  
18 November 16, 2015, but the Court denied that request. *See*, Exhibit 1 for Order Denying Plaintiff's  
19 Motion for Leave to Amend. Therefore, GB Sciences filed our present case against Desert Aire  
20 Wellness on December 2, 2015, which is a year after the initial challenge was brought and apparently  
21 after Desert Aire Wellness had taken the necessary steps to open the dispensary.

22 The Division continues to support that a final decision can be reached in this case through  
23 summary judgment so any issues can be resolved at the appellate level in an expedited fashion. The  
24 Division submits that discovery in this matter would only add to the delay and not alter the issues before  
25 this Court. If this Court declines to reconsider its prior decision, the Division does support that a stay of  
26 the revocation be entered into this matter for Desert Aire Wellness. The community will not be served  
27 by the closure of an operating dispensary while this matter is resolved by the court system

28 ///

CONCLUSION

Again, no property interest exists for either the plaintiff or any registrant in this matter and the Division does not have an interest in any particular establishment receiving or maintaining a registration. The Division respectfully requests this Court to issue a final decision and to grant stay if necessary for Desert Aire Wellness.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: April 26, 2016.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Linda C. Anderson  
Linda C. Anderson  
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on April 26, 2016, I electronically served the foregoing by using the electronic filing system to e-serve a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti on May 9, 2014..

Linda Rouse  
An Employee of the Office of the Attorney General

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                   DESERT AIRE WELLNESS, LLC

3                                   Appellant,

4                   vs.

5                   GB SCIENCES NEVADA, LLC

6                                   Respondent.

CASE NO.: 70462

DISTRICT COURT CASE NO.:  
A-15-728448-C

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Tracie K. Lindeman  
Clerk of Supreme Court

7                   **EMERGENCY MOTION FOR STAY PENDING APPEAL FILED**  
8                                   **UNDER NRAP 27(e)**  
9                   **(REQUEST FOR CONSIDERATION BY SINGLE JUSTICE)**  
10                   **(ACTION NEEDED AS SOON AS POSSIBLE)**

11                   Appellant Desert Aire Wellness, LLC (“Desert Aire”), requests that this  
12                   Court consider this motion as soon as possible since the Order being appealed  
13                   requires the State to revoke Desert Aire’s medical marijuana registration  
14                   certificate and, thus, would lead to the closure of Desert Aire’s dispensary  
15                   business. This would cause Desert Aire irreparable harm and, indeed, would  
16                   likely put it out of business permanently after Desert Aire has spent over \$2  
17                   million and a year and a half of its members’ lives working to open the  
18                   business. Further, the State and City of Las Vegas (and the medical marijuana  
19                   patients who live there) would lose a fully compliant medical marijuana  
20                   establishment that has been safely and securely providing medical marijuana  
21                   to patients in Nevada since early 2016. Reflecting this, the State has joined  
22                   Desert Aire in requesting that the district court stay revocation.<sup>1</sup>

23                   **I. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

24                   This is an appeal from a decision by the district court ordering the  
25                   Division of Public and Behavioral Health (DPBH), the State subdivision

26                   <sup>1</sup> See Exhibit (“Exh.”) 1 (State’s April 26, 2016 Response to Desert Aire’s  
27                   Motion for Reconsideration) at p. 3:4-5 (“The Division requests ... a stay if  
28                   necessary for Desert Aire....”).

1 responsible for regulating medical marijuana businesses, to revoke the medical  
2 marijuana registration certificate DPBH issued to Desert Aire.<sup>2</sup>

3 In May 2014, DPBH issued a comprehensive application, designed to  
4 allow the agency to evaluate applicants' fitness to operate a medical marijuana  
5 establishment ("MME").<sup>3</sup> (See Exh. 3 (application)<sup>4</sup>; see also Exh. 2 at p. 3:6.)  
6 The State's process is twofold: first provisional certificates are issued. See  
7 NAC § 453A.312. Then, once all local requirements are met, final permission  
8 to operate is granted through a final registration certificate. See NAC §  
9 453A.316. For the first phase, DPBH informed all applicants for registration  
10 certificates they had until August 18, 2014 to submit the entire application.  
11 (Exh. 3 at p. 9.) Pursuant to Nev. Rev. Stat. § 453A.322, DPBH further  
12 advised that each applicant needed to follow the application the State had  
13 drafted and that it would not consider any additional materials. (Exh. 3 at p.  
14 10.) The City of Las Vegas did not issue any type of approval to any applicant  
15 before the deadline.

16 Desert Aire is a small, woman-owned company. It is passionate about  
17 providing safe access to medical marijuana, including to underserved groups.<sup>5</sup>  
18 Desert Aire submitted an application by the deadline, on DPBH's required  
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20 <sup>2</sup> See Exh. 2 (April 28, 2016 district court order granting motion for summary  
21 judgment).

22 <sup>3</sup> Unlike the local approval process, the State application process did not allow  
23 for lobbying and DPBH required that the substantive portions of the  
application be submitted anonymously. (See Exh. 3 at p. 10.)

24 <sup>4</sup> A copy of the DPBH Application was attached to GB Sciences' January 21,  
25 2016 Motion for Summary Judgment.

26 <sup>5</sup> See James DeHaven, *Desert Aire Wellness pot shop wins Las Vegas*  
27 *Approval*, Las Vegas Review Journal, December 17, 2014 (attached as Exh.  
28 4.)

1 form. Its application included everything required, including proof of meeting  
2 local zoning restrictions (in the form of a letter from a licensed surveyor).

3 DPBH reviewed and ranked numerous applications. Based on the  
4 substance of the applications, DPBH determined that Desert Aire was better  
5 qualified to serve medical marijuana patients than numerous other applicants,  
6 including Respondent, GB Sciences.<sup>6</sup> Thus, on November 3, 2014 it granted  
7 Desert Aire a provisional registration certificate but denied GB Sciences  
8 provisional permission to operate. Desert Aire then proceeded towards serving  
9 patients. It obtained final approval from the City of Las Vegas, spent over \$1  
10 million building out its facility (located on leased property), received final  
11 State approval, spent sizable amounts of money and time getting the business  
12 open, opened the facility at the beginning of 2016, and has continued to spend  
13 significant time and money securing a patient base, developing compliant  
14 operating procedures, and training qualified medical marijuana agents.

15 Unable to get registration certificates from DPBH on its merits because  
16 it did not perform well enough in DPBH's ranking process (which, again, was  
17 both substantive and anonymous), GB Sciences has been involved in a number  
18 of lawsuits.<sup>7</sup> GB Sciences then filed suit against Desert Aire and the State of  
19 Nevada contending that the Court should require DPBH to revoke Desert  
20 Aire's registration certificate since its name was not included on an October  
21 30, 2014 letter from the City of Las Vegas that provided a preliminary list of  
22 the MMEs the City had granted preliminary approval.

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24 <sup>6</sup> See Exh. 4 at pp. 1-2 (noting that DPBH ranked Desert Aire as Las Vegas'  
25 tenth-best applicant).

26 <sup>7</sup> See Exh. 4 at p.2 (noting GB Sciences filed suit after DPBH denied  
27 application); *see also* Eighth Judicial District Court Case Nos. A-14-710597-  
28 C; A-14-710488-C (other suits initiated by GB Sciences).

1       The City of Las Vegas subsequently formally approved other MMEs for  
2 business licensing and zoning, including Desert Aire. The State did not review  
3 this information, and was not required to, before issuing provisional  
4 registration certificates. Yet, inventing a technical requirement to obtain a  
5 license that does not exist, the district court has ruled that the State should not  
6 have granted provisional certificates to any entity not on the City's October 30,  
7 2014 letter. (Exh. 2 at p. 5:22-23.) Specifically, the district court found that  
8 pursuant to NRS 453A.322 (3)(a)(5), Desert Aire needed to include in its  
9 Application proof that it had been licensed by the City of Las Vegas or a letter  
10 from the City stating applicant's facility met the medical marijuana zoning  
11 restrictions. (Exh. 2 at p.4:15-21.)

12       The State has admitted that it never requested or required such proof  
13 from any applicant, and there was no place in the application to include such  
14 information. (*See* Exh. 5 (State's March 3, 2016 Response to GB Science's  
15 Motion for Summary Judgment) at p.3:16-26.) And, again, no entity could  
16 have submitted any such information from the City of Las Vegas before the  
17 application deadline. Nevertheless, inserting its own judgment for DPBH's,  
18 the district court—without allowing any discovery—granted summary  
19 judgment, ruling that DPBH misapplied the law when it granted Desert Aire's  
20 provisional registration certificate back in 2014 and ordering that DPBH  
21 revoke Desert Aire's registration certificate. (*See* Exh. 2 at pp. 5-6.)

22       In issuing what amounts to the extreme remedy of a mandatory  
23 injunction without allowing Desert Aire to conduct discovery,<sup>8</sup> the district  
24 court misunderstood the statutory scheme at issue and improperly inserted its

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25 <sup>8</sup> Discovery is needed to address, *inter alia*, whether GB Sciences has had  
26 standing throughout the litigation.

1 own judgment for DPBH's, in excess of its authority. The resulting order, if it  
2 is enforced, would lead to inequitable and absurd results that are odds with the  
3 underling policy and aim of Nevada's medical marijuana laws. The district  
4 court also improperly ignored precedent from this Court holding that: (1)  
5 substantial compliance with statutes is sufficient; (2) under the doctrines of  
6 laches and estoppel a license should not be revoked as a result of the  
7 government's mistake where the other party relied upon the State's actions in  
8 leading the person to believe that they were within their rights to proceed  
9 forward based upon the license or other governmental approval; and (3) the  
10 District Court should have construed the statute to avoid manifest injustice  
11 since (a) no one could have complied with the statute, (b) the statute was  
12 clearly ambiguous since it stated the applicant had to submit its application on  
13 the State's prescribed form (and no additional information could be submitted)  
14 and the form did not include any spot for the allegedly missing information,  
15 and (c) DPBH clearly construed the statute in a manner inconsistent with the  
16 district court and yet the court did not give DPBH deference.

17 For all these reasons, Desert Aire filed a notice of appeal on May 25,  
18 2016. Desert Aire has also requested a stay from the District Court, which was  
19 denied.<sup>9</sup> If a stay is not granted the object of the appeal will be defeated:  
20 without a stay, Desert Aire's business will be closed, its relationships with its  
21 patients and customers will be lost, its lease will be in jeopardy, its competitive  
22 advantage in being one of the first to market lost, and its assets will be drained  
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24 <sup>9</sup> The request for stay was included with the motion for reconsideration filed  
25 by Desert Aire on April 14, 2016, which was denied in its entirety by the  
26 court. (See Exh. 6 (minutes of May 16, 2016 hearing on Desert Aire's motion  
27 for reconsideration and request for stay).) Thus, Desert Aire has complied  
28 with NRAP 8(a)(1)(A)'s requirement that an appellant must first seek a stay  
in the district court.

1 to zero due to ongoing expenses without any income. For these same reasons,  
2 Desert Aire faces irreparable harm. It would be unjust to take back Desert  
3 Aire's license a year and a half after the State issued the license and Desert  
4 Aire spent millions of dollars and years of its members' lives to build and open  
5 the facility. Further, the public policy underpinning Nevada's medical  
6 marijuana laws will be thwarted, as Desert Aire is safely providing medical  
7 marijuana in full compliance with all state and local laws. On the other hand,  
8 GB Sciences will not suffer whatsoever from a stay since the district court did  
9 not grant GB Sciences the license being revoked. Thus, GB Sciences could not  
10 possibly suffer any harm during the stay.

## 11 **II. EACH OF THE NRAP 8(C) FACTORS FAVORS GRANTING** 12 **THE STAY**

13 This Court considers four factors in deciding whether to issue a stay:  
14 (1) "whether the object of the appeal will be defeated if the stay is denied;" (2)  
15 "whether appellant will suffer irreparable or serious injury if the stay is  
16 denied;" (3) "whether respondent will suffer irreparable or serious injury if the  
17 stay is granted;" and (4) "whether appellant is likely to prevail on the merits in  
18 the appeal." Nev. R. App. P. 8(c). As detailed below, each of these factors  
19 weighs in favor of a stay. However, this Court has "not indicated that any one  
20 factor carries more weight than the others," and instead "recognizes that if one  
21 or two factors are especially strong, they may counterbalance other weak  
22 factors. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38  
23 (2004) (citing *Hansen v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000)).

24 *Mikohn* involved "an appeal from an order refusing to compel  
25 arbitration." *Mikohn*, 120 Nev. at 250, 89 P.3d at 37. Thus, the Court's stay  
26 analysis "necessarily reflect[ed] arbitration's unique policies and purposes" (as  
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1 well as the interlocutory nature of that appeal. *Id.* at 251-52, 38. Accordingly,  
2 the first factor—whether the object of the appeal would be defeated—was of  
3 such importance that it alone “generally warrant[ed] a stay of trial court  
4 proceedings pending resolution of the appeal.” *Id.* “The other stay factors  
5 remain[ed] relevant, but absent a strong showing that the appeal lacks merit or  
6 that irreparable harm will result if a stay is granted,” this Court noted that “a  
7 stay should issue to avoid defeating the object of the appeal.” *Id.* Here, just as  
8 the “unique policies and policies” underpinning arbitration were at issue in  
9 *Mikohn*, the unique policies and purposes of Nevada’s medical marijuana laws  
10 should be key to the Court’s analysis of a stay. And, just as in *Mikohn*, a stay  
11 should issue to avoid defeating the object of the appeal “absent a strong  
12 showing that that the appeal lacks merit or that irreparable harm will result if a  
13 stay is granted.” *Id.* at 252, 38.

14 A stay is especially appropriate because the district court’s order would  
15 thwart the public interest, which courts have considered in evaluating stay  
16 requests. For example, in *Hilton v. Braunskill*, 481 U.S. 770 (1987), the United  
17 States Supreme Court held that the standard for stays pending appeals requires  
18 appellate courts to consider “where the public interest lies” separately from  
19 and in addition to “whether the applicant [for stay] will be irreparably injured  
20 absent a stay.” *Id.* at 776; *accord Nat. Res. Def. Council, Inc. v. Winter*, 502  
21 F.3d 859, 863 (9th Cir. 2007).

22 **A. THE OBJECT OF THE APPEAL WILL BE DEFEATED IF**  
23 **A STAY IS DENIED SINCE DESERT AIRE WILL LOSE ITS**  
24 **BUSINESS.**

25 The first factor under NRAP 8(c) is whether the object of the appeal will  
26 be defeated if the stay is denied. This factor weighs heavily in favor of  
27 granting the stay since in effect the object of the appeal will be completely  
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1 defeated if the stay is denied. This is because if the stay is denied Desert Aire's  
2 business will be closed. Thus, for the next year plus while the appeal is being  
3 decided Desert Aire (which has already exhausted its available funds to get the  
4 business open and marketed) will have no income to pay the lease, will lose all  
5 of its patients, and will lose the \$2 million invested in the business plus future  
6 profits. (*See* Exh 7 (April 12, 2016 Declaration of Brenda Gunsallus).)<sup>10</sup>  
7 Indeed, if Desert Aire loses its registration certificate it is very unlikely that  
8 Appellant could survive such that it could reopen if it were to prevail on the  
9 appeal. As a result the object of the appeal would be defeated if the stay is  
10 denied. Under *Mikohn Gaming Corporation v. McCrea*, 120 Nev. 248, 89 P.3d  
11 36 (2004), the complete loss of the object of appeal alone warrants a stay  
12 absent "a strong showing that that the appeal lacks merit or that irreparable  
13 harm will result if a stay is granted." Here, of course, GB Sciences cannot  
14 show that the appeal lacks merit or that it faces any harm, let alone irreparable  
15 harm.

#### 16 **B. DESERT AIRE WILL SUFFER IRREPARABLE HARM**

17 The second factor under NRAP 8(c) is whether Desert Aire will suffer  
18 irreparable or serious harm if the stay is denied. This factor closely mirrors the  
19 first factor. Again Desert Aire will suffer significant irreparable harm in the  
20 form of losing its entire business. Indeed, it will lose \$100,000 worth of  
21 product which is currently in the business. It will lose all its patients, with  
22 whom Desert Aire has spent significant time building a confidential and  
23 supportive relationship. All of its competitors will gain a significant  
24 advantage which will be impossible to overcome. Accordingly, the irreparable  
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26 <sup>10</sup> Ms. Gunsallus' affidavit was attached to Desert Aire's April 4, 2016  
27 Motion to Reconsider.  
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1 harm factor also weighs heavily in favor of granting the stay.

2 **C. GB SCIENCES WILL NOT SUFFER IRREPARABLE**  
3 **HARM.**

4 The third factor under NRAP 8(c) is whether the respondent will suffer  
5 irreparable or serious injury if the stay is granted. Here, GB Sciences will not  
6 suffer any irreparable harm. This is because even though the Court ordered  
7 Desert Aire’s registration certificate to be revoked it did not grant that  
8 certificate to the Respondent. As a result, GB Sciences will suffer no harm if  
9 the stay is granted since it cannot open its own medical marijuana business  
10 until the appeal is finalized and then only if it were to subsequently obtain a  
11 registration certificate from DPBH. Thus, this factor also weighs heavily in  
12 favor of granting the stay.

13 **D. DESERT AIRE IS LIKELY TO SUCCEED ON THE**  
14 **MERITS.**

15 Desert Aire has numerous strong arguments as to why the district  
16 court’s decision should be reversed. It only needs to prevail on one of those.

17 **1. The Court’s Decision Should Be Reversed Because It**  
18 **Misapprehended the Statutory Scheme And Inserted Its**  
19 **Judgment for the State’s.**

20 Nev. Rev. Stat. § 453A.322 does not state that the State cannot issue a  
21 provisional registration certificate if the applicant does not provide proof of  
22 licensure from the local government. Rather, NRS 453A.322 merely states that  
23 if an application included certain things the division “shall issue to the  
24 establishment a medical marijuana establishment registration certificate.” NRS  
25 453A.322(5). The only statutory requirements regarding the application were  
26 that the applicant submit the application on the form prescribed by the division  
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1 under NRS 453A.322. The application form that DPBH issued mirrored the  
2 requirements NAC 453A.306. Defendants not only submitted the application  
3 on the form prescribed by the division but also included all of the information  
4 required.

5 Of course, pursuant to NRS 453A.326, the State could not issue the  
6 final registration certificate until the proof of conformance with local zoning  
7 requirements and the business license was obtained by the applicant.  
8 Reflecting that GB Sciences' case at best relies on a technicality, Desert Aire  
9 has since been issued a special use permit and a business license from the city  
10 of Las Vegas. Thus, DPBH interpreted the statute as requiring the application  
11 to include the items set forth in NAC 453A.306 in order for the applicant to  
12 receive a provisional certificate and then the proof of zoning and business  
13 license from the City of Las Vegas before issuing the final approval under  
14 NRS 453A.326. (*See* Exh. 8 (State's December 9, 2014 response to motion for  
15 preliminary injunction in Eighth Judicial Dist. Court Case. No. A-14-710488-  
16 C).)

17 There is nothing wrong with this interpretation, and the district court  
18 should have deferred to it. This Court has explained that the judicial branch  
19 should refrain from stepping into the shoes of the State and making decisions  
20 for it. *North Lake Tahoe Fire Protection District v. Washoe County Board of*  
21 *County Commissioners*, 129 Nev. Adv. Op. 72, 310 P.3d 583, 585-587 (2013).  
22 Indeed, the district court failed to consider that DPHB has considerable  
23 discretion to interpret and implement the statutes governing the issuance of  
24 registration certificates. *See Int'l Game. Tech., Inc. v. Second Jud. Dist. Court*  
25 *of Nevada*, 122 Nev. 123, 157, 127 P.3d 1088, 1106 (2006); *see also Boulder*  
26 *City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1989)

1 (city's interpretation of its own laws is cloaked with a presumption of  
2 validity). Because agencies such as the DPHB have discretion to construe the  
3 under which they operate, courts "are obliged to attach substantial weight to  
4 the agency's interpretation." *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d 842,  
5 844 (1983).

6       Moreover, given that the statutory scheme at issue here is so new,  
7 DPHB's discretion in interpreting and implementing the scheme is at its apex.  
8 Courts have recognized that deference to an agency is "heightened where . . .  
9 the regulations at issue represent the agency's initial attempt at interpreting  
10 and implementing a new regulatory concept." *Texaco, Inc. v. Dep't of Energy*,  
11 663 F.2d 158, 165 (D.C. Cir. 1980) (quotation and parentheses omitted).  
12 This is so because administrative agencies like DPHB are often presented with  
13 statutory schemes that contain gaps or contradictions. Thus, administrative  
14 agencies are vested with the authority to fill the gaps and reconcile statutory  
15 contradictions consistent with the power vested in them by the Legislature to  
16 best carry out the statutory purpose. *See Atwell v. Merritt Sys. Prot. Bd.*, 670  
17 F.2d 272, 282 (D.C. Cir. 1981) (agency is empowered to reconcile arguably  
18 conflicting statutory provisions, and the court's role is limited to ensuring that  
19 the agency effectuated an appropriate harmonization within the bounds of its  
20 discretion). Here, the statutory purpose DPHB is tasked with carrying out is  
21 making sure the most qualified applicants are the ones authorized to dispense  
22 medical marijuana to licensed patients.

23       Particularly in light of the case law regarding deference to agencies,  
24 and in light of the standing issues discussed below, the extreme relief issued  
25 by the district court was improper. Mandatory injunctions are generally issued  
26 "to restore the status quo, to undo wrongful conditions." *Leonard v. Stoebling*,  
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1 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986). Here, however, the district  
2 court's issuance of a mandatory injunction does not maintain the status quo.  
3 Rather, it undermines the DPHB's interpretation and implement of the  
4 statutory scheme. This was error, as a court cannot exercise its equitable  
5 powers in conflict with a statute. *See Blaine Equip. Co. v. State*, 122 Nev. 860,  
6 866, 138 P.3d 820, 823 (2006) ("On remand, the district court may not rely on  
7 its equitable power to disregard the mandatory language of NRS  
8 333.810(1)."); *see also State, Victims of Crime Fund v. Barry*, 106 Nev. 291,  
9 292-93, 792 P.2d 26, 27-28 (1990) (court cannot "grant a remedy which  
10 contradicts the statute").

11  
12 **2. The Court's Decision Should Be Reversed Because**  
13 **Desert Aire At Least Substantially Complied.**

14 A unanimous decision from this Court, *Markowitz v. Saxon Special*  
15 *Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569 (2013), held that despite the  
16 fact that a statute required a bank to come to a foreclosure mediation with an  
17 appraisal no more than 60 days old it should not have lost the case merely  
18 because its appraisal was 83 days old. The *Markowitz* Court held a court  
19 should consider policy and equity principles along with the language of the  
20 statute as a whole to determine whether it should allow technical deviation  
21 from form requirements of a statute. *Id.* at 571. Similarly, in *Schleining v. Cap*  
22 *One, Inc.* 130 Nev. Adv. Op. 36, 326 P3d 4 (2014), this Court noted that where  
23 the purpose of the statute has been met by the person, allowing substantial  
24 compliance is proper. *See also Nevada Equities, Inc. v. Willard Pease Drilling*  
25 *Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) ("the claimant substantially  
26 complied with the licensing scheme under both chapters. . . . It had passed the  
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1 scrutiny of the Contractors' Board in these respects and was issued a license.  
2 We shall not condone a forfeiture in the absence of any ascertainable public  
3 policy requiring us to do so.'').

4 Here, there is no question that the purpose of the statute was met. The  
5 statute in question merely required the applicant to provide proof that its  
6 facility met the medical marijuana zoning requirements for the City of Las  
7 Vegas. Not only did Desert Aire meet this requirement at all points in time as  
8 shown by its attainment of a special use permit from the City of Las Vegas, it  
9 also submitted in its application proof that it met those zoning restrictions in  
10 the form of a letter from a licensed surveyor. Again, at the time the  
11 applications were to be submitted there was no ability to do anything more.  
12 Indeed, the City of Las Vegas required each of its applicants to provide a letter  
13 from a licensed surveyor showing it met the zoning restrictions to satisfy its  
14 own applications requirement that the applicant show it met the zoning  
15 restrictions.

16 Desert Aire submitted every piece of information requested on DPBH's  
17 application form. The application did not include a section for the information  
18 the district court now says was required. (*See* Exh. 3 at p. 10.) It is impossible  
19 that Desert failed to substantially comply with the statutes governing  
20 application. The statutes only require an applicant must submit its application  
21 on the State-proscribed form. Desert Aire did so, and included every piece of  
22 required information. Moreover, DPBH did not allow for additional  
23 information to be submitted (*see id.* at p.10), and did not allow for  
24 supplements after the application deadline. Based on the above-cited case law  
25 and in light of the fact that the purpose of the statute was met, the Court should  
26 find that, under policy and equity principles, Desert Aire substantially  
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1 complied with any application requirements.

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3 **3. The District Court's Order Would Lead to Absurd**  
4 **Results And Violate Public Policy.**

5 A court should construe statutes in a way as to avoid an absurd result. It  
6 would be an absurd result to revoke Desert Aire's registration certificate a year  
7 and a half after it had been granted on the grounds that it failed to include  
8 information in an application that was not required. Obviously, there are gaps  
9 and inconsistencies in this relatively new statutory scheme which can engender  
10 confusion. However, it would be unfair to punish the Desert Aire for any  
11 problems with the statute, which did not address the fact that the State's  
12 application deadline would occur at a point in time before local governments  
13 issued licenses.

14 The district court's extreme order runs contrary to this Court's mandate  
15 that statutes must be interpreted in order to give effect to the legislature's  
16 intent, as well as the public policy concerns underlying that intent. *See Salas v.*  
17 *Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513 (2000)  
18 ("Our objective in construing statutes is to give effect to the legislature's  
19 intent.") Where the statutory language is ambiguous, this Court must construe  
20 it "according to that which reason and public policy would indicate the  
21 legislature intended." *State, Dep't of Mtr. Vehicles v. Lovett*, 110 Nev. 473,  
22 477, 874 P.2d 1247, 1249–50 (1994) (quotation omitted); *see also Smith v.*  
23 *Kisorin USA, Inc.* 127, Nev. Adv. Op. 37, 254 P.3d 636 (2011) (statutes  
24 should be construed as a whole so that all provisions are considered together  
25 and, to the extent practicable reconciled and harmonized).

26 In interpreting statutes, this Court considers the policy and spirit of the  
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1 law and will seek to avoid an interpretation that leads to an absurd result.  
2 *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*,  
3 123 Nev. 349, 357, 167 P.3d 421, 427 (2007) (citation omitted). Here,  
4 permitting the district court's order to stand would lead to absurd results that  
5 run contrary to the public policy underlying the Nevada Legislature's  
6 enactment of the medical marijuana laws. In enacting the medical marijuana  
7 statutory scheme, the Nevada Legislature sought to provide medical marijuana  
8 patients with safe and reliable access to medical marijuana. It also sought to  
9 regulate the cultivation and sale of medical marijuana to ensure the quality and  
10 safety of the product available to consumers. Very few applicants were able to  
11 meet the stringent requirements set forth in the statutory and regulatory  
12 scheme the Legislature implemented to achieve these goals. Accordingly, it  
13 would be absurd and contrary to public policy to allow the district court to take  
14 away the license of a medical marijuana establishment that met all of DPBH's  
15 stringent requirements and has been providing patients with safe access to  
16 medical marijuana. Further, the district court's order would violate equal  
17 protection in that numerous medical marijuana establishments have been  
18 granted provisional registration certificates from the State of Nevada despite  
19 not having submitted the proof of compliance with local requirements that the  
20 district court, in rewriting the Division's application process, now contends  
21 was necessary.

22  
23 **4. Desert Aire Should Also Prevail On Equitable Estoppel**  
24 **Grounds.**

25 Desert Aire has two strong arguments with respect to equitable  
26 estoppel. First, it would be grossly unfair to revoke a party's license under the  
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1 facts set forth in this case, including the substantial reliance by the Desert Aire  
2 and the alleged errors of DPBH. This Court's precedent shows that a court  
3 should use its equitable powers to prevent a manifest injustice from occurring  
4 and this is such a case. DPBH (and the statute) required applicants to submit  
5 information (and only the information) asked for on the application form  
6 which did not include the information GB Sciences alleges should have been  
7 required. Further, NAC 453A.322(4) states that if DPBH did not approve the  
8 application, it had an affirmative duty to inform Desert Aire that its application  
9 had not been approved.

10 Not only did DPBH not notify Desert Aire that its application was not  
11 approved but it actually informed Desert Aire that its application had been  
12 approved and granted Desert Aire a provisional registration certificate. Desert  
13 Aire relied upon this approval (on November 3, 2014) to spend the next year  
14 and a half of their lives working towards opening the facility without pay,  
15 spent money to build out the facility, opened for business, marketed the  
16 business and acquired a significant client base. It would be a manifest injustice  
17 to revoke their license at this time because of an alleged error by the State. In  
18 *Nevada Pub. Employees v. Byrne*, 96 Nev. 276, 607 P2d 1351 (1980), the  
19 Court held that equitable estoppel prevented a government entity from denying  
20 benefits as a result of a technical violation of a statute stating:

21 We would turn the doctrine of equitable estoppel up on its  
22 head if we were to hold that the power to correct an inequity,  
23 as unjust as the one here, would, without more, defeat our  
Court's inherent power to seek or do equity.

24 *Id.* at 280.

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1                   **5.     Desert Aire Is Entitled to Equitable Estoppel Because**  
2                   **GB Sciences Dismissed A Similar Action.**

3                 Not only should DPBH be estopped but so should GB Sciences be  
4                 estopped from bringing the action. It brought a similar action against Desert  
5                 Aire seven months before it brought the instant action. It dismissed that action  
6                 against Desert Aire. During the seven month gap before GB Sciences suddenly  
7                 filed a new action, Desert Aire spent the bulk of its costs to build out the  
8                 facility. As a result, GB Science is equitably estopped.

9  
10               **6.     Laches Also Warrants Reversal.**

11               In *Carson City v. Price*, 113 Nev. 409, 934 P3d 104 (1997), the Nevada  
12               Supreme Court stated:

13                         Laches is an equitable doctrine which may be invoked  
14                         when delay by one party works to the disadvantage of the  
15                         other, causing a change of circumstances which would  
16                         make the grant of relief to the delaying party  
17                         inequitable... Thus, laches is more than a mere delay in  
18                         seeking to enforce one's rights; it is a delay that works to  
19                         the disadvantage of another...The condition of the party  
                              asserting laches must become so changed that the party  
                              cannot be restored to its former state.

20               *Id.*, at 412, 413 (internal quotation marks and citations omitted). Here, laches  
21               applies because DPBH accepted the Desert Aire's application and did not  
22               provide notice that the application was deficient. DPBH then provided Desert  
23               Aire with a provisional, and later, final registration certificate. When DPBH  
24               did this they knew the Desert Aire would move forward and spend significant  
25               sums based on that issuance. Desert Aire went forward and spent  
26               approximately \$2 million, several years' of work, built the facility, opened the  
27  
28

1 facility, marketed the facility and developed the patient base.

2 **7. GB Sciences Lacks Standing.**

3 As of the application deadline, the City had issued no letters or issued  
4 any licenses. Thus, GB Science itself did not comply with its interpretation of  
5 NRS 453A.322(3)(a)(5) since it did not include the information listed under  
6 that subsection with its application.

7 Yet, the District Court found that because the City provided DPBH  
8 with a list of entities who had received provisional registration certificates 87  
9 days after the application deadline it somehow complied with the subsections  
10 requirement that the information be provided with the application. Obviously  
11 providing a letter 87 days after a deadline does not comply the requirement  
12 that GB Sciences contends should be written into the application process.  
13 Thus, if its interpretation were correct, GB Sciences had no standing to bring  
14 the lawsuit to begin with.

15 Additionally, GB Sciences has no standing because it has no vested  
16 rights in the certificate which DPHB awarded to Desert Aire. NRS 453A.320  
17 makes clear that applicants—and even holders of a certificate—do not acquire  
18 vested rights. The State emphasized this point in its response to GB Sciences’  
19 motion for summary judgment. (*See* Exh. 5 at p. 6:10-12.)

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1     **III.   CONCLUSION**

2             For all these reasons, emergency relief is warranted and a stay of the  
3     district court's order pending appeal should issue.

4  
5             Dated this 26th day of May, 2016.

6  
7                             /s/ Margaret A. McLetchie  
8                             MCLETCHIE SHELL LLC  
9                             Margaret A. McLetchie (Bar No. 10931)  
10                            Alina M. Shell (Bar No. 11711)  
                              701 East Bridger Ave., Suite 520  
                              Las Vegas, Nevada 89101

11                            and

12                            FENNEMORE CRAIG, P.C.  
13                            Richard H. Bryan (Bar No. 2029)  
14                            Patrick J. Sheehan (Bar No. 3812)  
                              300 S. Fourth Street, Suite 1400  
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15                            *Attorneys for Desert Aire Wellness, LLC*  
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1 **NRAP 27(e) CERTIFICATE**

2 Pursuant to NRAP 27(e), I hereby certify that I am counsel to Appellant  
3  
4 Desert Aire Wellness, LLC, and further certify:

5 1. The contact information for the attorneys of the real parties in interest  
6 is:  
7

8 Margaret A. McLetchie  
9 Nevada Bar No. 10931  
10 Alina M. Shell  
11 Nevada Bar No. 11711  
12 MCLECHIE SHELL LLC  
13 701 #. Bridger Avenue, Suite 520  
14 Las Vegas, NV 89101

James E. Shapiro  
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13 Richard Bryan  
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19 Las Vegas, Nevada 89101

Linda Anderson  
Nevada Bar No. 4090  
Chief Deputy Attorney General  
555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101

20 2. The facts showing the existence and nature of the emergency are set  
21 forth in the Memorandum of Points and Authorities in support of Appellant's  
22 Emergency Motion for Stay.

23 3. Pursuant to NRAP 27(e)(1), on May 24, 2016 at approximately 1:15  
24 p.m., I, along with co-counsel Patrick Sheehan, contacted Sheldon Herbert, by  
25 telephone and advised him that Appellant would be filing the instant  
26  
27  
28

1 Emergency Motion for Stay.

2  
3 4. At approximately 1:17 p.m. the same day, Mr. Sheehan and I contacted  
4 Chief Deputy Attorney General Linda Anderson by telephone and advised her  
5 that Appellant would be filing the instant Emergency Motion for Stay.

6  
7 5. Additionally, at approximately 2:35 p.m. on May 24, 2016, I contacted  
8 Nevada Supreme Court Clerk Linda Hamilton by telephone to inform the  
9 Court that Appellant would be filing this emergency motion.

10  
11 6. Counsel for the other parties in this matter will be served with this  
12 motion electronically upon its filing with this Court.

13  
14 7. Appellant sought a stay in the district court. The district court denied  
15 Appellant's request for a stay on May 16, 2016.

16 Respectfully submitted this 26<sup>th</sup> day of May, 2016

17  
18  
19 By: /s/Margaret A. McLetchie  
20 Margaret A. McLetchie  
21 Nevada Bar No. 10931  
22 MCLETCHIE SHELL LLC  
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26 maggie@nvlitigation.com  
27 Attorney for Desert Aire Wellness, LLC  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing EMERGENCY MOTION FOR STAY PENDING APPEAL FILED UNDER NRAP 27(e) (REQUEST FOR CONSIDERATION BY SINGLE JUSTICE) (ACTION NEEDED AS SOON AS POSSIBLE) was filed electronically with the Nevada Supreme Court on the 26th day of May, 2016. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Sheldon Herbert, Nevada Bar No. 5988  
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/s/ Pharan Burchfield  
Employee of McLetchie Shell LLC