

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

2   DESERT AIRE WELLNESS, LLC, a  
3   Nevada Limited Liability Company,

4                   Appellant/Cross-Respondent,  
5   vs.

6   GB SCIENCES NEVADA, LLC, a  
7   Nevada Limited Liability Company,

8                   Respondent/Cross-Appellant,  
9   and

10   THE STATE OF NEVADA,  
11   DIVISION OF PUBLIC AND  
12   BEHAVIORAL HEALTH,  
13   DEPARTMENT OF HEALTH AND  
14   HUMAN SERVICES,  
15   Respondent.

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CASE NO.: 70462

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

16                   **JOINT APPENDIX VOLUME V**

17                   Appeal from Eighth Judicial District Court, Clark County

18                   The Honorable Kenneth C. Cory, District Judge

19                   District Court Case No. A-15-728448-C

20   FENNEMORE CRAIG, P.C.  
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25   and

26   MCLETCHE SHELL LLC  
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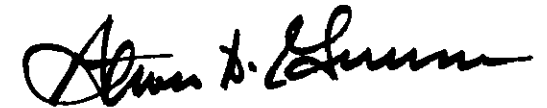
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CLERK OF THE COURT

1 **OPPS**

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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

13 STATE OF NEVADA, DIVISION OF PUBLIC  
14 AND BEHAVIORAL HEALTH OF THE  
15 DEPARTMENT OF HEALTH AND HUMAN  
16 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,

17 Defendants.

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

20 Counterclaimant,

21 vs.

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

23 Counterdefendant.

Case No. **A-15-728448-C**

Dept. No. **I**

**OPPOSITION TO 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**

Date: May 16, 2016

Time: Chambers

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**OPPOSITION TO 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**

COMES NOW Plaintiff/Counterdefendant GB SCIENCES NEVADA, LLC, a Nevada limited liability company (“*GB Sciences*”), by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and files its Opposition to 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 (the “*Motion for Reconsideration*”).

This Opposition is made and based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, the attached Exhibits, and any oral argument the Court wishes to entertain in the premises.

DATED this 2<sup>nd</sup> day of May, 2016.

SMITH & SHAPIRO, PLLC

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## MEMORANDUM OF POINTS AND AUTHORITIES

I.

## PREFATORY STATEMENT

Before the Court is a Motion for Reconsideration filed by Defendant/Counterclaimant Desert Aire Wellness, LLC (“*Desert Aire*”). However, reconsideration of a decision by a District Court is only warranted in two instances: (1) where “if substantially different evidence is subsequently introduced” which was not before the District Court when it rendered its decision that could have affected the outcome; or (2) where, based upon the evidence before the District Court, the District Court made a colossal error in rendering its decision. Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 941 P.2d 486, 489, 113 Nev. 737 (Nev., 1997). In fact, the Nevada Supreme Court has made it clear that “Only in *very rare instances* in which new

1 issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a  
2 motion for rehearing be granted.” Id. citing to Moore v. City of Las Vegas, 92 Nev. 402, 405, 551  
3 P.2d 244, 246 (1976) (emphasis added).

4 While Desert Aire does a good job of regurgitating all of the arguments it previously raised,  
5 the vast majority of the arguments raised by Desert Aire were raised, discussed, argued and rejected  
6 at the last hearing. Further, Desert Aire does not identify any basis which would demonstrate that  
7 the Court’s prior ruling was incorrect in any way. Therefore, Desert Aire’s Motion fails to qualify  
8 as one of the “*very rare instances*” which reconsideration is appropriate and should summary be  
9 rejected. Masonry and Tile Contractors Ass’n of Southern Nevada, 941 P.2d at 489 (emphasis  
10 added).

11 II.

12 STATEMENT OF FACTS

13 A. GENERAL BACKGROUND.

14 In 2013, Senate Bill 374 was passed which provided for the registration of medical marijuana  
15 establishments authorized to cultivate or dispense marijuana or manufacture edible marijuana  
16 products or marijuana-infused products for sale to persons authorized to engage in the medical use  
17 of marijuana. Senate Bill 374 was codified into N.R.S. Chapter 453A. Under N.R.S. § 453A.320  
18 et seq., the Division was tasked with processing and ranking applications for Medical Marijuana  
19 Establishments (“MMEs”) for each local jurisdiction in Nevada. There were three types of MME’s,  
20 Dispensaries, Cultivation Facilities, and Production Facilities. The MME at issue in this lawsuit is  
21 a Dispensary.

22 The Division, as well as the local jurisdiction, played a role in the ultimate licensing of  
23 MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,  
24 zoning and proximity to other business or facilities (the “Local Application Process”) while the  
25 Division focused on public health, public safety, and marijuana as a medicine (the “Division  
26 Application Process”).

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1 **B. THE CITY OF LAS VEGAS' APPLICATION PROCESS.**

2 In accordance with its responsibilities, Defendant CITY OF LAS VEGAS ("City of Las  
3 Vegas") enacted Ordinance No. 6321 and 6324 to establish zoning regulations, licensing regulations,  
4 and standards for MME locations. In addition, the City of Las Vegas issued a Medical Marijuana  
5 Business License Application Form (the "Las Vegas Application").

6 **C. THE DIVISION'S APPLICATION PROCESS.**

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

11 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 requires the applicant to obtain  
13 preliminary zoning approval ("Zoning Approval"). Specifically, N.R.S. § 453A.322(3)(a)(5) states:

14 If the city, town or county in which the proposed medical marijuana establishment  
15 will be located has enacted zoning restrictions, proof of licensure with the applicable  
16 local 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.**

17 N.R.S. § 453A.322(3)(a)(5) (emphasis added).

18 **D. DESERT AIRE'S APPLICATION.**

19 Desert Aire was one of the forty-nine (49) applicants for a Dispensary License in the City  
20 of Las Vegas. The City of Las Vegas was allotted twelve (12) MME Registration Certificates.

21 Desert Aire submitted its Las Vegas Application. However, Desert Aire subsequently  
22 withdrew its application, presumably because the Planning Commission had voted 4-1 to deny  
23 Desert Aire's application. Thus, on October 28-29, 2014, when the Las Vegas City Council held  
24 a special meeting to consider each applicant for a special use permit and compliance permit for an  
25 MME Dispensary, Desert Aire's application had already been withdrawn and therefore was not  
26 considered. Ultimately, the City of Las Vegas approved twenty-seven (27) applications, denied ten  
27 (10) of the applications, and did not make any decision on six (6) of the applications because they  
28 had been withdrawn prior to the City Council's October 28, 2014 special meeting.

1 The very next day, on October 30, 2014, the City of Las Vegas sent a letter to the Division  
2 notifying the Division of their decision and specifically identifying the twenty-seven (27) applicants  
3 that had been approved for a special use permit and compliance permit from the City of Las Vegas,  
4 the ten (10) applicants who had been denied, and the six (6) applicants who had withdrawn their  
5 application. As stated in the October 30, 2014 letter, it, along with the tables attached to the letter  
6 (which identified the status of approval of the applicants), was prepared and delivered to comply  
7 with the notification requirements of Las Vegas Municipal Code 6.95.080.

8 Notwithstanding the fact that the Division had been notified that Desert Aire did not meet  
9 the requirements of N.R.S. § 453A.322(3)(a), the Division inappropriately issued a Provisional  
10 Certificate for an MME Dispensary to Desert Aire, in violation of its authority and in violation of  
11 N.R.S. § 453A.322(3)(a)(5).

12 **E. PLAINTIFF'S APPLICATION.**

13 Meanwhile, unlike Desert Aire, on October 9, 2014, the City of Las Vegas Planning  
14 Commission had recommended approval of Plaintiff's request for a special use permit. Further,  
15 unlike Desert Aire, Plaintiff GB Sciences was one of the twenty-seven (27) applicants approved by  
16 the City of Las Vegas on October 28-29, 2014.

17 On or about November 3, 2014, Plaintiff received notification from the Division that it was  
18 not issued a Provisional Certificate because it was not ranked in the top twelve (12) by the Division.  
19 Rather, the Plaintiff was ranked No. 13 by the Division.

20 The Plaintiff fully complied with all requirements of the City of Las Vegas and the Division  
21 for the establishment of a MME. If the Division had complied with N.R.S. § 453A.322(3)(a) and  
22 disqualified Desert Aire due to Desert Aire's failure to comply with N.R.S. § 453A.322(3)(a)(5), the  
23 Plaintiff would have been ranked 12<sup>th</sup> in the Division's ranking and would, therefore, have received  
24 a Provisional Certificate from the Division.

25 **E. THE LAWSUIT.**

26 On or about December 2, 2015, Plaintiff filed its Complaint in this case, seeking declaratory  
27 relief, injunctive relief, petition for judicial review, and petition for a writ of mandamus. Plaintiff  
28 filed the action to obtain Court assistance in compelling the Division to revoke Desert Aire's

1 Provisional Registration Certificate and reissue it to Plaintiff, which had complied with N.R.S. §  
2 453A.322(3)(a)(5).

3 On or about February 26, 2016, Plaintiff filed a motion for summary judgment. On or about  
4 March 3, 2016, Desert Aire filed an opposition and countermotion for summary judgment. On or  
5 about March 15, 2016, the Court heard the competing motions for summary judgment. At the  
6 hearing, the partially granted and partially denied Plaintiff's motion for summary judgment. The  
7 Court specifically ordered the Division to rescind or withdraw the Registration Certificate issued to  
8 Desert Aire, but declined to order the Division to reissue the same Registration Certificate to  
9 Plaintiff. A written Order was entered on April 28, 2016.

10 On or about April 14, 2016, Desert Aire filed the instant Motion for Reconsideration, arguing  
11 (or more accurately rearguing) that there were eleven (11) reasons why the Court got it wrong: (1)  
12 Desert Aire was not required by the statutes to provide the information in N.R.S. §  
13 453A.322(3)(a)(5) but only the information in NAC 453A.306, which it provided; (2) the Division  
14 interpreted the statute the same way because its MME application form mirrored NAC 453A.306;  
15 (3) the statute (N.R.S. § 453A.322(3)(a)(5)) is, at least, ambiguous; (4) if proof of zoning was  
16 required, Desert Aire complied with a surveyor's letter in its initial application to the Division; (5)  
17 Desert Aire substantially complied with the statute by submitting the surveyor letter; (6) equitable  
18 estoppel and laches prohibit the revocation of Desert Aire's registration certificate; (7) statutes like  
19 the one at issue should be construed liberally to avoid "unjust results"; (8) even if Desert Aire  
20 technically breached the statute, it was cured by the issuance of a special use permit later; (9) if the  
21 Court Order is allowed to stand, all applicants must have their registration certificates revoked  
22 because no one had zoning approval at the time that they submitted their applications; (10) Plaintiff  
23 lacks standing because it did not have zoning approval in its application; and (11) discovery is  
24 needed under 56(f).

25 For the following reasons, but primarily because Desert Aire has not raised any new issues  
26 of fact or law, Desert Aire's Motion for Reconsideration should be denied.

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III.

STATEMENT OF AUTHORITIES

A. DESERT AIRE HAS NOT MET THE BURDEN OF MOVING FORWARD WITH A MOTION FOR RECONSIDERATION.

In its Motion for Reconsideration, Desert Aire does not address the standard on a motion for reconsideration. Nonetheless, the Nevada Supreme Court maintains that a district court may only reconsider a previously decided issue if *substantially different evidence is subsequently introduced* or the *decision is clearly erroneous*. Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 941 P.2d 486, 113 Nev. 737 (Nev. 1997)(emphasis added).

The term “clearly erroneous” means more than a reviewing court’s conclusion that it would have reached a different result than the lower court; rather, “[a] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire record is left with the *definite and firm conviction that a mistake has been committed*.” Anderson v. City of Bessemer City, 470 U.S. 564, 573, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985) (quoting U.S v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948)); Concrete Pipe and Products v. Construction Laborers Pension Trust, 508 U.S. 602, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993)(emphasis added).

In its Motion for Reconsideration, Desert Aire does not attempt to introduce substantially different evidence. Similarly, Desert Aire fails to raise any new legal theories or arguments. Finally, for the reasons explained herein, Desert Aire does not demonstrate that the Court’s decision was “clearly erroneous” as it relates to the revocation of Desert Aire’s Registration Certificate<sup>1</sup>. Therefore, the Motion for Reconsideration should be denied.

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<sup>1</sup> GB Sciences obviously disagrees with the Court’s decision not to issue the now available Registration Certificate to GB Sciences, but that part of the Court’s ruling is not a party of the pending motion and as such, will not be addressed here.

1 **B. NONE OF DESERT AIRE’S ARGUMENTS HAVE MERITS.**

2 **1. Desert Aire Simply Did Not Comply with the MME Laws.**

3 a. *Zoning Approval Under N.R.S. § 453A.322(3)(a)(5) was Absolutely*  
4 *Required and Desert Aire Failed to Obtain it During the Application*  
5 *Period.*

6 As explained in the Motion for Summary Judgment, NRS § 453A.322(3)  
7 makes it clear that the Division is authorized to issue a Provisional Registration Certificate *if and*  
8 *only if* the applicant *had complied* with N.R.S. § 453A.322(3)(a)(5). Specifically, N.R.S. §  
9 453A.322(3) states, in pertinent part:

10 3. ... not later than 90 days after receiving an application..., the Division shall register  
11 the medical marijuana establishment and issue a medical marijuana establishment  
12 registration certificate and a random 20-digit alphanumeric identification number *if*:

13 (a) The person who wishes to operate the proposed medical marijuana  
14 establishment *has submitted* to the Division *all of the following*:

15 \* \* \*

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

22 N.R.S. § 453A.322(3) (emphasis added). There is no ambiguity. *Before* the Division could issue  
23 a Provisional Registration Certificate, the applicant must have received zoning approval of some  
24 sort, either (1) proof of licensure with the applicable local government authority; or (2) *a letter from*  
25 *the applicable local governmental authority certifying that the proposed medical marijuana*  
26 *establishment is in compliance with those restrictions and satisfies all applicable building*<sup>2</sup>

27 <sup>2</sup> The Provisional Registration Certificate is only provisional until the applicant “is in compliance with all  
28 applicable local government ordinances or rules, and the local government has issued a business license for the operation  
of the establishment.” However, just because the Provisional Registration Certificate is “provisional” until everything  
is complied with (i.e., safety inspections, public hearings, special use permit actually issued, fees paid, suitability  
interviews conducted by Las Vegas Metropolitan Police Department, business license actually issued, etc.), it does not  
mean that the initial showings required by N.R.S. § 453A.322(3)(a)(5) can be ignored or taken care of later by Desert  
Aire. Otherwise, N.R.S. § 453A.322(3)(a)(5) would never have been drafted into the statute because N.R.S. § 453A.326  
would have been sufficient. The plain language of N.R.S. § 453A.322(3)(a) [*“has submitted”*] belies this argument, in  
any event.

1 *requirements*. No amount of arguing by Desert Aire or anyone else is going to change this fact, nor  
2 is this a new argument that the Court did not hear at the prior hearing.

3 As this Court already found, the City of Las Vegas issued the letter required by N.R.S. §  
4 453A.322(3), when it issued the October 30, 2014 letter. A true and correct copy of the October 30,  
5 2014 letter is attached hereto as Exhibit “2” and incorporated by this reference herein. Thus,

6 In this case, there is simply no dispute that Desert Aire was not listed on the City of Las  
7 Vegas’ October 30, 2014 letter. Nor is there any dispute that the City of Las Vegas’ October 30,  
8 2014 letter was drafted solely to comply with NRS § 453A.322(3)(a)(5). Because Desert Aire was  
9 not listed in the City of Las Vegas’ October 30, 2014 letter, it did not comply with NRS §  
10 453A.322(3)(a)(5) when the Provisional Certificate was issued on November 3, 2014. Thus, the  
11 Division exceeded its authority by issuing the Provisional Certificate to Desert Aire<sup>3 & 4</sup>.

12 There is no uncertainty in this language. The words “*if*” “*has submitted*... *all* of the  
13 following” leave no ambiguity as to whether or not the requirements set forth in N.R.S. §  
14 453A.322(3)(a)(5) are discretionary or mandatory, or whether they be taken care of *BEFORE* the  
15 Provisional Registration Certificate has been issued. These words make it clear that the Division  
16 is authorized to issue a Provisional Registration Certificate *if* it has *received* some form of approval  
17 from the local government as described in N.R.S. § 453A.322(3)(a)(5).

18 Nonetheless, in its Motion for Reconsideration, Desert Aire essentially argues that the MME  
19 laws really only require an applicant to fill out an application form provided by the Division, and,  
20 because the application forms created by the Division only contain the requirements set forth in  
21  
22

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23 <sup>3</sup> The fact that Desert Aire later obtained zoning approval from the City of Las Vegas is irrelevant. Nor does  
24 it change the fact that, as of November 3, 2014, NRS § 453A.322(3)(a)(5) did not allow the Division to issue the  
Provisional Certificate to Desert Aire.

25 <sup>4</sup> Desert Aire tries to differentiate itself from the applicants in the HOR Case and NuLeaf Case because neither  
26 obtained SUP approval. See Motion for Reconsideration at 4:18-22. However, what makes Desert Aire’s claim to a  
27 registration certificate equally fatal, as that of the applicants in the HOR Case and NuLeaf Case, is the critical fact that  
28 in neither instance did the applicants at issue obtain the proof of approval set forth in N.R.S. § 453A.322(3)(a)(5) during  
the 90-day application period. Further, as already explained in the briefing related to GB Science’s and Desert Aire’s  
competing motions for summary judgment, the result in NMMD is irrelevant. The NMMD Case was never resolved on  
its merits, but was, instead, dismissed. Thus, the findings of Judge Delaney were made under a different standard and  
based upon a different set of facts.



1 NAC 453A.306, Desert Aire was entitled to ignore the remaining provisions of N.R.S. Chapter  
2 453A. *See* Motion for Reconsideration at 2:8-15.

3 However, a proper reading of the registration rules for MMEs set forth in N.R.S. §§  
4 453A.320 - 453A.344 produce a different understanding. Specifically, N.R.S. § 453A.322 sets forth  
5 the requirements for registration with the Division. Subsection (2) references the need for an  
6 applicant to “submit to the Division an application on a form prescribed by the Division.” However,  
7 Subsection (3) references additional requirements that must be met within the 90-day period between  
8 application and issuance of an MME registration certificate, above and beyond the requirements set  
9 forth in NAC 453A.306. Thus, regardless of whether the Division created its application form to  
10 “mirror” NAC 453A.306, as Desert Aire contends, Desert Aire is clearly on notice of the law, which  
11 also requires that Desert Aire (and any MME applicant, for that matter) comply with all submissions  
12 required by the MME laws (including the remaining provisions of N.R.S. § 453A.322(3)(a)).  
13 Nonetheless, Desert Aire failed to do so.

14 b. *The Proof of Zoning Approval was not Required to be Submitted at the*  
15 *Time of the Initial Application.*

16 In its Motion for Reconsideration, Desert Aire also tries to excuse its failure  
17 to comply with the provisions of N.R.S. § 453A.322(3)(a)(5), by wilfully misreading Chapter 453A  
18 to require that the required submittals in N.R.S. § 453A.322(3)(a)(5) be made at the time that MME  
19 applications are first submitted to the State. *See* Motion for Reconsideration at 3:8-12.<sup>5</sup>

20 Again, this was an issue that raised, argued, discussed and considered by the Court during  
21 the last hearing. As such, it is inappropriate to reargue the matter.

22 Notwithstanding, N.R.S. § 453A.322 does not require what Desert Aire claims. What N.R.S.  
23 § 453A.322 requires is that the Division issue registration certificates within 90 days of the receipt  
24 of an application, and that *before a registration certificate can be issued within that 90 day period*,  
25 the Division has received the several items identified in N.R.S. § 453A.322(3)(a):

26 (1) application fee;

27 \_\_\_\_\_  
28 <sup>5</sup> Desert Aire, then goes on to claim that it was the only applicant who actually complied. The specifics of  
Desert Aire’s arguments will be addressed further, below.

- 1 (2) application form containing the information identified in N.R.S. § 453A.322(3)(a)(2);
- 2 (3) operating procedures related to security measures, use of an electronic verification
- 3 system, and inventory control system;
- 4 (4) operating procedures for handling edibles (if applicable);
- 5 (5) proof of the Zoning Approval; and
- 6 (6) any other information that the Division might request.

7 *See* N.R.S. § 453A.322(3)(a).

8 There is certainly no language set forth in N.R.S. § 453A.322(3)(a)(5) that mandates that the  
9 Zoning Approval be submitted at the time that an application form is first submitted to the Division;  
10 otherwise, N.R.S. § 453A.322(3)(a)(5) would have stated “. . . , proof licensure with the applicable  
11 local governmental authority or a letter from the applicable local governmental authority certifying  
12 that the proposed medical marijuana establishment is in compliance with those restrictions and  
13 satisfies all applicable building requirements *has been submitted at the same time as the application*  
14 *required by Subsection (2), above,*” or something to that effect. However, no such wording is  
15 contained in N.R.S. § 453A.322(3)(a)(5). Rather, N.R.S. § 453A.322(3)(a)(5) is a subsection of  
16 N.R.S. § 453A.322(3), which merely requires that it be complied with during the 90 days between  
17 submission of applications and issuance of a registration certificate by the Division.

18 This makes logical sense, in light of the fact that special use permits and business licenses  
19 take time to obtain, as would a letter from a local government certifying compliance, and would not  
20 have been available to any applicant when applications were first submitted to the Division. To  
21 allow the process to progress; however, applicants are permitted the 90-day period to begin the  
22 process and obtain either full licensure, or the letter from the local authority. In the latter case, a  
23 registration certificate can be issued “provisionally” until full licensure is later obtained. *See* N.R.S.  
24 § 453A.326(3).

25 Moreover, other details demonstrate that Desert Aire is incorrect. For example, subsection  
26 (4) of N.R.S. § 453A.322(3)(a) involving the handling of edibles is not reflected in NAC 453A.306,  
27 yet would clearly need to be furnished to the Division outside of the initial application form and  
28 attachments. Further, subsection (6) of N.R.S. § 453A.322(3)(a) contemplates the Division having

1 “additional questions” that would need to be answered at some point after an application form was  
2 initially submitted to the Division.

3 Finally, the Division’s own application form contemplates a “90-day application period”  
4 wherein certain portions of an MME application may be completed or issues related thereto resolved.  
5 See Exhibit “1”. Specifically, pages 23 and 24 of the form provide that “Applicant has until the end  
6 of the *90-day application period* to resolve any background check information which would cause  
7 the application to be rejected.” See last entry in the table contained in Section 6.1 of the form  
8 (emphasis added). See also Section 6.4 of the form (an application can be disqualified if a person  
9 who is disqualified from serving as an owner, officer or board member “remains on the application  
10 *90 days after the date on which the Division initially received the application*”). Therefore, there  
11 is no basis for Desert Aire’s argument that N.R.S. § 453A.322(3)(a)(5) had to be satisfied with the  
12 initial application forms and attachments due in August 2014.

13 c. *Most of the Applications Would not Need to be Revoked if the Order*  
14 *Stands.*

15 Desert Aire also argues that if the Order on the competing motions for  
16 summary judgment is allowed to stand, it will produce a ridiculous result because “all of the other  
17 applicant licenses would be revoked.” See Motion for Reconsideration at 3:8-9.

18 Once again, this is an argument that was raised, argued, discussed, considered and rejected  
19 by the Court during the last hearing. Therefore, it is inappropriate for Desert Aire to raise it again  
20 here. See Masonry and Tile Contractors Ass’n of Southern Nevada, 941 P.2d at 489.

21 As was true the during the last hearing, this argument is absurd and is based upon Desert  
22 Aire’s misguided claim that the zoning approval required by N.R.S. § 453A.322(3)(a)(5) had to be  
23 provided at the time that an application form was initially submitted to the Division.

24 As explained above, a fair reading of Chapter 453A renders a conclusion that the Zoning  
25 Approval required by N.R.S. § 453A.322(3)(a)(5) could be obtained during the “90-day application  
26 period” which the Division, itself, identified in Section 6.1 of the MME application form. In this  
27 case, there were 12 registration certificates allocated to the City of Las Vegas which were at stake.  
28 As the October 30, 2014 letter from the City of Las Vegas demonstrates, other than 3 undisclosed

1 applicants, only NuLeaf and Desert Aire did not obtain Zoning Approval required by N.R.S. §  
2 453A.322(3)(a)(5) during the “90-day application period”. All of the others complied. *See* MME  
3 Dispensary scores, attached hereto as Exhibit “3” and incorporated by this reference herein. *See*  
4 *also* Exhibit “2”. Therefore, allowing the ruling in the Order that revokes Desert Aire’s registration  
5 certificate to stand will not produce the stark result that Desert Aire claims it would.

6 d. *Desert Aire did not Comply with N.R.S. § 453A.322(3)(a)(5).*

7 Desert Aire also claims that it actually complied with N.R.S. §  
8 453A.322(3)(a)(5) because it included a letter from a surveyor in its initial application, “showing  
9 it met the City medical marijuana restrictions.” *See* Motion for Reconsideration at 2:19-23.

10 However, this is not true for a number of reasons.

11 First, the clear language of N.R.S. § 453A.322(3)(a)(5) states:

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

16 N.R.S. § 453A.322(3)(a)(5)(emphasis added). The survey letter was not a license and was not a  
17 letter “*from* the applicable government authority.” It was simply a letter from a surveyor containing  
18 a separation analysis for the proposed location of an MME establishment.

19 Second, Exhibit “8” attached to Desert Aire’s Motion for Reconsideration contains the City  
20 of Las Vegas’ requirements for a special use permit. On this one page alone, there are no less than  
21 12 requirements that must be met before an SUP was considered for issuance. In other words,  
22 assuming that the survey letter submitted by Desert Aire was sufficient to satisfy the “separation  
23 distance survey” requirement, Desert Aire still had a long way to go to meet all of the other  
24 requirements, including, but not limited to providing the City of Las Vegas with a justification letter,  
25 plans, elevations, and financial information. Even after submission of everything set forth in Exhibit  
26 “8” to the Motion for Reconsideration, Desert Aire’s application would still have to be considered  
27 by City planning staff and subject to public hearings before licenses or permits could be issued. The  
28 survey letter, alone, was clearly insufficient.

1 Third, the October 30, 2014 letter from the City of Las Vegas (which showed Plaintiff, but  
2 not Desert Aire on the “approved” list) was the only authorized document intended to comply with  
3 N.R.S. § 453A.322(3)(a)(5). This is obvious from the face of the letter, which stated that it was “the  
4 required notification under LVMC 6.95.080.” See Exhibit “2”. Las Vegas Municipal Code  
5 6.95.080(D), in turn, states that “[u]pon approval of a medical marijuana compliance permit, the  
6 Director shall prepare a notice to the State regulating authority pursuant to NRS 453A.322(3)(a)(5),  
7 outlining that the proposed location has been found in conformance with the land use and zoning  
8 restrictions . . .” A true and correct copy of Section 6.95.080 of the Las Vegas Municipal Code is  
9 attached hereto as Exhibit “4” and incorporated by this reference herein. Therefore, the October 30,  
10 2014 was the only document which could satisfy the requirements of N.R.S. § 453A.322(3)(a)(5),  
11 short of an actual permit.

12 Finally, by providing the survey letter to the Division in its initial application, Desert Aire  
13 was actually attempting to support a wholly separate and distinct requirement of the MME laws.  
14 Nevada Revised Statutes § 453A.322(3)(a)(2) requires that an application include:

15 (II) The physical address where the proposed medical marijuana establishment will  
16 be located and the physical address of any co-owned additional or otherwise  
17 associated medical marijuana establishments, the locations of which may not be  
18 within 1,000 feet of a public or private school that provides formal education  
19 traditionally associated with preschool or kindergarten through grade 12 and that  
existed on the date on which the application for the proposed medical marijuana  
establishment was submitted to the Division, or within 300 feet of a community  
facility that existed on the date on which the application for the proposed medical  
marijuana establishment was submitted to the Division;

20 Nevada Revised Statutes § 453A.322(3)(a)(2).

21 The survey letter which was attached as Exhibit “2” to the Motion for Reconsideration was  
22 addressed to the City of Las Vegas, and likely a part of Desert Aire’s application for a special use  
23 permit from the City of Las Vegas. However, if Desert Aire claims that it also included a copy of  
24 this letter in its application to the Division, then it apparently was submitted to the Division in  
25 support of Desert Aire’s application under § 453A.322(3)(a)(2), because the letter references “NRS  
26 § 453A.322” and the need for the MME dispensary to be more than 300 feet away from a  
27 “community facility” and more than 1000 feet from a school, as mandated by N.R.S. §  
28 453A.322(3)(a)(2). In other words, the survey was submitted to the Division to comply with N.R.S.

1 § 453A.322(3)(a)(2), not N.R.S. § 453A.322(3)(a)(5), which is an entirely separate and independent  
2 requirement of the MME laws and with which Desert Aire never complied.

3 e. *Liberal Construction of a Statute does not Include Writing it out of*  
4 *Existence.*

5 Desert Aire also argues that N.R.S. § 453A.322 should be liberally construed  
6 to “avoid unjust results.” See Motion for Reconsideration at 3:4-5. However, liberal construction  
7 does not allow a court to write a statute out of existence or to interpret a statute to alter its plain  
8 meaning. See Krol v. CF&I Steel, 307 P.3d 1116 (Colo. Ct. App. 2013). Rather, when a statute's  
9 language is plain and unambiguous, a court will give that language its ordinary meaning. Banegas  
10 v. SIIS, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001). Only when a statute may be given more than  
11 one reasonable interpretation, is it ambiguous. Id. When an ambiguous statute is construed, it  
12 should be given a meaning that is consistent with what the Legislature intended, based on reason and  
13 public policy. Id.

14 In this case, Desert Aire cries injustice by trying to treat its situation as if this is merely a  
15 contest between itself and the Division, which made an error in the issuance of a provisional  
16 registration certificate. This is illustrated with Desert Aire’s reference to Nevada Equities v. Willard  
17 Pease Drilling Co., 84 Nev. 300, 440 P.2d 122 (1968). The argument goes that the court should just  
18 “look the other way” because no party was prejudiced.

19 However, unlike the facts in Willard Pease, the opportunity to operate an MME business is  
20 a privilege that is highly regulated by the State of Nevada, subject to the laws related to the issuance  
21 of State certificates and local licenses, and limited in the City of Las Vegas to only up to 12  
22 applicants per year. If Desert Aire did not comply with those MME laws, which it did not, there is  
23 nothing unjust about disallowing it from operating such a business. Especially where other  
24 competitors of Desert Aire, such as the Plaintiff in this case, did comply with the MME laws, but  
25 lost the opportunity of conducting such a business due to clear error by the Division in the issuance  
26 of its registration certificates. Thus, there is no unjust result to avoid, to justify torturing the  
27 meaning of N.R.S. § 453A.322, as Desert Aire wishes the Court to do. At the same time, unlike in  
28 Willard Pease, there will be great prejudice and harm to Plaintiff and other competitors of Desert

1 Aire due to the Division's error in granting the registration certificate to an unqualified applicant  
2 (Desert Aire).

3 In any event, the plain meaning of N.R.S. § 453A.322 should be observed because there is  
4 nothing ambiguous in the provisions of N.R.S. § 453A.322. Just because the application form may  
5 ask an applicant for some (but not all) of the information and documentation needed, and that N.R.S.  
6 § 453A.322 may have additional requirements beyond filling out the form, it does not mean that the  
7 statute is ambiguous, as Desert Aire contends. As explained above, the statute is clear and Desert  
8 Aire simply failed to comply with it.

9 2. **Desert Aire did not Substantially Comply with the MME Laws or "Cure" its**  
10 **Failure to Comply with N.R.S. § 453A.322(3)(a)(5).**

11 Desert Aire also tries to excuse its failure to follow the law by arguing that it  
12 "substantially complied" with the MME laws. *See* Motion for Reconsideration at 2:26-3:2.

13 As before, this argument was raised, argued, discussed, considered and rejected by the Court  
14 during the last hearing. Therefore, it is inappropriately raised here. *See* Masonry and Tile  
15 Contractors Ass'n of Southern Nevada, 941 P.2d at 489.

16 However, substantial compliance means "actual compliance in respect to the substance  
17 essential to every reasonable objective of the statute." Costa v. Superior Court, 39 Cal. Rptr. 3d 470  
18 n.24 (Ct. App., 3<sup>rd</sup> Dist., 2006). "Substantial compliance may be sufficient 'to avoid harsh, unfair  
19 or absurd consequences.' Under certain procedural statutes and rules, however, failure to strictly  
20 comply . . . can be fatal to a case." Leven v. Frey, 123 Nev. 399, 407, 168 P.3d 712, 717 (2007)  
21 (quoting 3 Norman J. Singer, *Statutes and Statutory Construction* § 57:19, at 58 (6th ed. 2001)). To  
22 determine whether a statute and rule require strict compliance or substantial compliance, this court  
23 looks at the language used and policy and equity considerations. *Id.* at 406–07, 168 P.3d at 717.

24 Notwithstanding, Desert Aire did not substantially comply with the statute at issue. The  
25 purpose of the statute is not simply to get medical marijuana "out on the street" as fast as possible,  
26 as Desert Aire seems to suggest. The purpose of the statute, and its very detailed requirements, is  
27 also to ensure that only truly qualified establishments are registered by the Division and licensed by  
28

1 the local authorities to conduct such a business. This is also evident from the fact that relatively few  
2 applicants are granted certificates each year (only twelve (12) for the City of Las Vegas).

3 As explained above, a letter from the surveyor containing a separation analysis is far from  
4 satisfying N.R.S. § 453A.322(3)(a)(5) or the purposes of the statute.<sup>6</sup> Because N.R.S. §  
5 453A.322(3)(a)(5) required applicants to provide the Division with proof of zoning approval, it was  
6 critically important to the State of Nevada that only those applicants with locations that the State  
7 knew were acceptable to local communities be permitted to operate an MME dispensary. Desert  
8 Aire could not satisfy this State concern because it failed to fulfill the requirements of N.R.S. §  
9 453A.322(3)(a)(5) during the Division's 90-day application period. What is more troubling in  
10 Desert Aire's case, and which Desert Aire fails to adequately explain to the Court, is the fact that  
11 before the 90-day application period had expired, the City of Las Vegas Planning Commission had  
12 voted 4-1 to *deny* Desert Aire's application for a special use permit and Desert Aire had *voluntarily*  
13 *withdrawn* its application. If Desert Aire's application and proposed business was so agreeable to  
14 the local community, then it did not make sense why the Planning Commission would have voted  
15 to reject it or why Desert Aire would have withdrawn its application with the City of Las Vegas.  
16 Clearly Desert Aire's actions speak louder than words regarding the suitability of its proposed MME  
17 dispensary at the expiration of the 90-day application period.

18 Desert Aire argues that it later obtained a special use permit, and, thus, cured its default of  
19 the provisions of N.R.S. § 453A.322(3)(a)(5). *See* Motion for Reconsideration at 3:5-8. However,  
20 the statute does not allow a cure period after the fact. Rather, the plain language of N.R.S. §  
21 453A.322(3)(a)(5) requires that Zoning Approval be obtained before the issuance of registration  
22 certificates, provisional or final, which is to occur by the end of the 90-day application period.

23 \\\

24 \\\

25 \\\

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27  
28 <sup>6</sup> Desert Aire's suggestion that the only statutory requirement was "just use our form" is equally nonsensical, when filling out the form was only one of six requirements set forth in N.R.S. § 453A.322(3)(a). *See* Motion for Reconsideration at 18:11-17.



1           **3.     GB Sciences Has Standing to Bring its Claims in this Case.**

2           Desert Aire further argues that Plaintiff has no standing to bring this action because  
3 it, too, failed to satisfy N.R.S. § 453A.322(3)(a)(5). *See* Motion for Reconsideration at 3:17-18 and  
4 18:18 - 19:20. However, Desert Aire's arguments are based upon the same false premise that the  
5 requirement for Zoning Approval set forth in N.R.S. § 453A.322(3)(a)(5) must be satisfied when the  
6 parties initially submitted their applications to the Division in August 2014. As explained above,  
7 this argument is incorrect. Plaintiff, in fact, did satisfy N.R.S. § 453A.322(3)(a)(5), because the City  
8 of Las Vegas sent its letter, dated October 30, 2014, informing the Division which applicants were  
9 in compliance with the Zoning Approval requirement of the statute. Unlike Desert Aire, Plaintiff  
10 was one of the applicants on the approved list. Thus, Desert Aire's argument is without merit.

11           **4.     Equitable Estoppel and Laches Cannot Save Desert Aire.**

12           Once again, Desert Aire is attempting to re-argue issues that were raised, argued,  
13 discussed, considered and rejected by the Court during the last hearing, which should not be toleratd.  
14 *See* Masonry and Tile Contractors Ass'n of Southern Nevada, 941 P.2d at 489.

15           Notwithstanding, Desert Aires arguments should be rejected the second time for the same  
16 reasons they were rejected the first time.

17           **a.     *There is no Basis for Equitable Estoppel.***

18           In its Motion for Reconsideration, Desert Aire argues that Court should  
19 reverse the well-reasoned decision to revoke Desert Aire's registration certificate under the defense  
20 of equitable estoppel. *See* Motion for Reconsideration at 3:2-4 and 19:21-21:8. Specifically, Desert  
21 Aire attacks the actions of both the Division and GB Sciences.

22           However, to prove a defense of equitable estoppel, Desert Aire would have to prove the  
23 following:

24           (1) the party to be estopped must be apprised of the true facts;

25           (2) he must intend that either his conduct be relied upon or the other party could reasonably  
26 believe he could act upon such conduct;

27           (3) the party asserting estoppel must be ignorant of the true state of facts, and

28           (4) he must have relied to his detriment on the conduct of the party to be estopped.

1 Breliant v. Preferred Equities Corp., 112 Nev. 663, 673-74, 918 P.2d 314 (1996). In this case, Desert  
2 Aire has no basis for equitable estoppel.

3 **b. *The Actions of the Division do not Support Equitable Estoppel.***

4 Desert Aire complains that the Court should ignore Desert Aire's failure to  
5 comply with the MME Laws of the State of Nevada because: (1) the Division approved its  
6 application for the Registration Certificate; (2) the provision at issue (N.R.S. § 453A.322(3)(a)(5))  
7 was not included in the Registration Certificate application form, and (3) the principals of Desert  
8 Aire "spent their life savings." See Motion for Reconsideration at 20:12 - 21:2.

9 However, Desert Aire cannot make out the defense of equitable estoppel against the Division.  
10 Desert Aire knew that it had withdrawn its application with the City of Las Vegas before the  
11 provisional registration certificates were issued. Desert Aire was on notice of the law, including the  
12 provisions of N.R.S. § 453A.322(3)(a)(5). Thus, it was not ignorant of the fact that the issuance of  
13 its provisional registration certificate by the Division was improper.

14 Further, Desert Aire seems to imply that there was some level of "unfair notice" in the fact  
15 that the application form provided by the Division (and "mirrored" by NAC 453A.306) did not  
16 include the requirements of N.R.S. § 453A.322(3)(a)(5). However, as explained earlier, Desert Aire  
17 is on notice of all of the law, not just what the Division may choose to put in its initial application  
18 form. Further, if there is any conflict between the Nevada Revised Statutes (which is the law of the  
19 land) and Nevada Administrative Code (which cannot trump the NRS, but which must comply with  
20 the NRS), the provisions of the Nevada Revised Statutes control.

21 Finally, N.R.S. § 453A.322(3)(a) provided six (6) separate and distinct requirements prior  
22 to issuance of a registration certificate, provisional or final, only one of which was filling out the  
23 application form. The form was never intended to be all-encompassing. For example, as explained  
24 earlier, the form did not reference the handling of edibles, which is also a requirement of N.R.S. §  
25 453A.322(3)(a)(4), where applicable.

26 Moreover, Desert Aire cannot claim to be "blind-sided" by the Division regarding the issue  
27 of the necessity of local approval. Section 5.2.13 of the Division's application form, attached as  
28 Exhibit "1", requires attachment to the application form of a professional survey in instances where

1 “a local government in which a proposed medical marijuana establishment will be located *has not*  
2 enacted zoning restrictions or the applicant *is not required to secure approval* that the applicant is  
3 in compliance . . .” See Exhibit “1” at 15. This section is also referenced in NAC 453A.306(13).

4 While not applicable to the present situation, because the City of Las Vegas *does have* zoning  
5 restrictions, what this means is that Desert Aire cannot claim reliance on anything communicated  
6 to Desert Aire from the Division by virtue of the contents of the application form, or that Desert Aire  
7 was led to believe by the contents of the application form that the zoning approvals of N.R.S. §  
8 453A.322(3)(a)(5) were not necessary. Rather the form, itself, raised the issue of zoning approval  
9 and referenced the need for an applicant to still attach a survey where zoning approval was not  
10 required. In fact, Desert Aire’s own actions in pursuing zoning approval belies the fact that Desert  
11 Aire knew full well that the City of Las Vegas *had* zoning and special use requirements (regardless  
12 of the contents of the Division’s application form).

13 Whether or not the principals of Desert Aire assumed the risk of “spending their life savings”  
14 in pursuit of a registration certificate, which they were on notice was fully revocable pursuant to  
15 N.R.S. § 453A.320, Desert Aire cannot seriously contend that it relied to its detriment on the actions  
16 of the Division. Issuance of Desert Aire’s registration certificate was in error; however, Desert Aire  
17 only has itself to blame for failing to comply with the law.

18 **c. *The Actions of the Plaintiff do not Support Equitable Estoppel.***

19 Desert Aire also complains that this Court should disregard the law because  
20 Plaintiff GB Sciences: (1) filed a lawsuit against Desert Aire; (2) Plaintiff dismissed the lawsuit, and;  
21 (3) Desert Aire incurred costs in the meantime. See Motion for Reconsideration at 21:3-8.

22 Again, this argument should be rejected for the same reasons it was rejected the first time.  
23 The actions of the Plaintiff are really irrelevant at this point. As Desert Aire admits, the revocation  
24 of its registration certificate is an action of the Division. See Motion for Reconsideration at 21:3.  
25 Further, the Court did not order that the revoked registration certificate be reissued to the Plaintiff,  
26 so Desert Aire has no real grievance against Plaintiff *vis-a-vis* improperly issued registration  
27 certificates because Plaintiff does not have one, either.

28 \\\

Moreover, as explained in Plaintiff's motion for summary judgment, soon after the Provisional Registration Certificate was issued to Desert Aire, it was made a party to the NuLeaf Case and remained as such for four months. Even though it was dismissed as a party on April 1, 2015, the dismissal was without prejudice and Plaintiff attempted to amend its Complaint to bring Desert Aire back into the case in mid-November 2015. Desert Aire was not ignorant that Plaintiff was asserting claims against its Provisional Registration Certificate because it was served with the Complaint in the NuLeaf Case, wherein Plaintiff made such claims. Desert Aire was also not ignorant of the fact that the dismissal was *without prejudice*, thus Plaintiff was preserving a right to make the same claims later.

Further, it cannot be said that Plaintiff intended Desert Aire to incur expenses believing that Plaintiff would never try to make any claims to the Provisional Registration Certificate issued to Desert Aire. It is really irrelevant to the Plaintiff what Desert Aire spends but if the Plaintiff intended Desert Aire to rack up expenses in the belief that Plaintiff would never assert any ongoing claim against the Provisional Registration Certificate issued to Desert Aire, Plaintiff would have dismissed Desert Aire, *with prejudice*. In addition, because the dismissal was *without prejudice*, Desert Aire cannot argue that it reasonably believed it could rack up development costs without a risk that Plaintiff would later re-assert claims to Desert Aire's Provisional Registration Certificate.

Finally, Desert Aire did not rely to its detriment on anything Plaintiff did or did not do. Desert Aire likely incurred development and start-up costs all along, including: (1) before it obtained the Provisional Registration Certificate; (2) after it obtained the Provisional Registration Certificate and while Desert Aire was still an active party to the NuLeaf Case for four months before the April 1, 2015 dismissal; and (3) on and after November 16, 2015, when Plaintiff sought to bring Desert Aire back into the NuLeaf Case. In fact, Desert Aire likely incurred its alleged expenses in the same manner as every other successful and unsuccessful applicant for an MME Registration Certificate: with the hope that it would be able to eventually open for business, but in clear recognition of the risks referred to above which might prevent that from happening. This is regardless of any of the legal disputes in cases moving through the court system, and whether certain parties were asserting certain claims. Simply put, Desert Aire would have incurred all of the same

1 expenses whether Plaintiff dismissed Desert Aire as a party to the NuLeaf Case or not. There was  
2 nothing Plaintiff did or did not do which would have changed any of that.<sup>7</sup> Therefore, equitable  
3 estoppel cannot excuse Desert Aire's failure to satisfy the provisions of N.R.S. § 453A.322(3)(a)(5).

4 d. *Laches Cannot Excuse Desert Aire's Failure to Comply with the Statute.*

5 Desert Aire also attempts, once again, to assert laches, based upon the alleged  
6 actions of Plaintiff, as a defense to its failure to comply with N.R.S. § 453A.322(3)(a)(5). *See*  
7 *Motion for Reconsideration at 21:9 - 22:23.*

8 As with Desert Aire's estoppel arguments, Desert Aire previously raised all of these  
9 arguments, all of which were rejected by the Court. Further, Desert Aire has not provided any  
10 reason why the Court should reach a different result this time around.

11 Laches is an equitable doctrine which will be invoked when delay by one party works to the  
12 disadvantage of the other, causing a change of circumstances which would make the grant of relief  
13 to the delaying party inequitable. Erickson v. One Thirty-Three, Inc. and Assoc.; 104 Nev. 755, 766  
14 P.2d 898, 900 (1988); Pub. Service Comm'n v. Sierra Pacific, 103 Nev. 187, 734 P.2d 1245 (1987);  
15 Leaver v. Grose, 610 P.2d 1262 (Utah 1980). Laches implies some kind of ignorance on the part of  
16 the supposed victim of the matter that is being delayed. Otherwise, as the doctrine is understood,  
17 the alleged victim would not have changed its circumstances based upon such a delay.

18 However, in this case, as with estoppel, the actions of Plaintiff are irrelevant at this stage of  
19 the proceedings because the revoked Registration Certificate was not reissued to Plaintiff.

20 Further, there is no factual basis to support a defense of laches. As explained in the briefing  
21 on the competing motions for summary judgment, Desert Aire was a party in NuLeaf Case as far  
22  
23

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24 <sup>7</sup> Certainly, there is no indication that Desert Aire would have simply rolled over, disgorged its Provisional  
25 Registration Certificate, and ceased development if it had not been dismissed as a party on April 1, 2015. Rather, it would  
26 have actively litigated the issue of entitlement to the Certificate, until a result was obtained. Desert Aire would have also  
27 continued to incur the same business start-up costs that it complains that it has incurred while the legal issues were in play.  
28 Desert Aire admits that its construction costs and the \$10,000.00 per month in lease payments which Desert Aire  
complaints it had to make *began on January 1, 2015, while Desert Aire was a party to the NuLeaf Case and three  
months before Desert Aire was dismissed as a party in the case.* Further, Desert Aire probably had the lease agreement  
in place even before the Provisional Registration Certificate was improperly issued and it probably was obligated to  
making those lease payments, whether it retained its Certificate or not. Thus, the dismissal did not "cause" Desert Aire  
to incur those costs.

1 back as December 2, 2014, when the NuLeaf Case was filed.<sup>8</sup> This was less than 30 days after the  
2 Provisional Registration Certificates were improperly issued to Desert Aire and others.

3 It was not until April 1, 2015 (four months later) that Desert Aire was dismissed from the  
4 NuLeaf Case, *without* prejudice. Plaintiff attempted to bring Desert Aire back into the NuLeaf Case  
5 as early as November 16, 2015, but Plaintiff's Motion to Amend was denied for reasons *other than*  
6 the substantive legal issues in dispute in the NuLeaf Case and in this case. While Desert Aire may  
7 not have known about Plaintiff's November 16<sup>th</sup> attempt, they were aware of this lawsuit, which was  
8 filed a few weeks later on December 2, 2015 (the same date as the hearing wherein the Motion to  
9 Amend was denied). Thus, there was only a period of roughly 7 ½ months that no active claims  
10 were on file against Desert Aire's improperly issued Provisional Registration Certificate. All costs  
11 allegedly incurred by Desert Aire outside of that gap were expended in blatant disregard for the  
12 potential peril that Desert Aire might suffer with a loss of its Provisional Registration Certificate.

13 At the same time, any activities undertaken, and costs incurred, by Desert Aire inside of the  
14 7 ½ month gap were incurred with full knowledge on the part of Desert Aire (and while assuming  
15 the risk), that Plaintiff might eventually reassert its claims to Desert Aire's Provisional Registration  
16 Certificate, as Plaintiff has done in this case. This is because Desert Aire was dismissed from the  
17 NuLeaf Case on April 1, 2015, *without prejudice*. It should have been clear to Desert Aire that  
18 Plaintiff was not permanently abandoning its claim to Desert Aire's Provisional Registration  
19 Certificate. Otherwise, the dismissal would have been *with prejudice*.

20 Moreover, Desert Aire was always on notice of the law. As explained in the summary  
21 judgment briefing, N.R.S. § 453A.320 clearly recognizes that "[a]ny medical marijuana  
22 establishment registration certificate issued pursuant to NRS 453A.322 . . . *is a revocable privilege*  
23 and the holder of such a certificate or card, as applicable, does not acquire thereby any vested right."  
24 N.R.S. § 453A.320 (emphasis added). Thus, regardless of any amount of investment made or cost  
25 incurred by Desert Aire, it clearly knows (or should know) that a Registration Certificate,  
26 provisional or otherwise, could be revoked at any time. There are numerous reasons why this can  
27

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28 <sup>8</sup> This was even two weeks *before* Desert Aire allegedly obtained a special use permit from the City of Las Vegas on December 17, 2014.

1 happen, and Desert Aire (along with everyone else) proceeds forward at their own risks. Desert Aire  
2 was also on public notice all along of the NuLeaf Case, HOR Case, and the other actions filed in the  
3 Eighth Judicial District Court wherein various applicants were vying for the limited MME  
4 Registration Certificates issued by the Division and legal claims of impropriety were being hotly  
5 contested. Nonetheless, Desert Aire apparently continued to expend costs in the face of this  
6 unsettled legal environment.

7 In its Motion for Reconsideration, Desert Aire relies heavily on Carson City v. Price, 113  
8 Nev. 409, 934 P.2d 1042 (1997), (previously cited in its briefing on the competing motions for  
9 summary judgment). However, as previously explained, in Price, the Nevada Supreme Court  
10 observed that the question of laches turns on the specific facts of the case. 113 Nev. 409, 934 P.2d  
11 at 1043. Unlike our case, the critical facts upon which the court's finding of laches hung were: (1)  
12 the respondent in Price had notice of an August 18, 1994 public hearing and failed to attend the  
13 hearing to object; (2) Carson City conveyed land at issue by deed on November 30, 1994; (3) on  
14 December 7, 1994 another notice was provided to the respondents that construction would begin; (4)  
15 on February 17, 1995 the public works department issued building permits; (5) construction began  
16 in February 1995; and (6) on April 11, 1995, the Respondents filed suit after a substantial amount  
17 of construction had been completed. *See Price* at 1043-44. Essentially, the respondents had done  
18 nothing to prosecute claims after receiving notice of what was going to transpire, which ultimately  
19 included conveyance of real property, issuance of construction permits, and a substantial amount of  
20 actual construction completed.

21 In contrast, Desert Aire was made a party to the NuLeaf Case soon after the Provisional  
22 Registration Certificate at issue was improperly issued by the Division and was an active defendant  
23 in that case for four months. Therefore, Plaintiff prosecuted its claims at the outset, before Desert  
24 Aire likely incurred the costs of which it complains. When Desert Aire was dismissed, it was  
25 *without prejudice*, meaning the claims were not being abandoned by the Plaintiff and were still  
26 hanging over Desert Aire's head as a real possibility. Further, Plaintiff tried to formally bring Desert  
27 Aire back into the NuLeaf Case, but was unable to, due to procedural issues. Unlike in Price, the  
28 entire time since the Provisional Registration Certificate was issued to Desert Aire, it has been an

1 active defendant or was aware that it could easily become an active defendant. Moreover, Desert  
2 Aire was always aware, or should have been aware, that its Provisional Registration Certificate could  
3 be revoked at any time, pursuant to N.R.S. § 453A.320, even if it had never previously been a party  
4 to the NuLeaf Case.

5 Desert Aire is not the only applicant to claim an affirmative defense of laches and estoppel.  
6 Both NeLeaf and Wellness Connection asserted those defenses in their answers in the NuLeaf Case  
7 and HOR Case, but to no avail. The courts in both cases revoked their improperly issued Provisional  
8 Registration Certificates for violation of the MME laws, nonetheless.

9 Desert Aire is also not the only applicant that has been incurring substantial costs in pursuit  
10 of an MME business. Plaintiff has been incurring the same or similar expenses for tenant build-outs,  
11 lease payments, and legal expenses necessary to obtain the proper permits and licenses, and to obtain  
12 the Provisional Registration Certificate that should have been issued to it in the first place.  
13 However, unlike Desert Aire, Plaintiff actually complied with N.R.S. § 453A.322(3)(a)(5), but was  
14 denied a registration certificate through the Division's error. Desert Aire cannot assert laches to  
15 remedy its failure to follow the law.

16 C. **THERE IS NO NEED FOR DISCOVERY UNDER N.R.C.P. 56(f).**

17 While often employed by a party with a weak case as a strategy at the early stages of a case  
18 to delay the inevitable entry of judgment, there is no basis to permit Desert Aire to avoid the Order  
19 revoking its registration certificate under N.R.C.P. 56(f).

20 Initially it should be noted that if there was really genuine issues of fact, that fact would have  
21 been raised at the prior hearing. However, the fact that Desert Aire did not raise this issue at the last  
22 hearing demonstrates that no genuine issues of material fact exist.

23 Nevada Rule of Civil Procedure 56(f) provides:

24 Should it appear from the affidavits of a party opposing the motion that the party  
25 cannot for reasons stated present by affidavit *facts essential to justify the party's*  
26 *opposition*, the court may refuse the application for judgment or may order a  
discontinuance to permit affidavits to be obtained or depositions to be taken or  
discovery to be had or may make such other order as is just.

27 N.R.C.P. 56(f) (emphasis added). An affidavit in support of N.R.C.P. 56(f) is insufficient where it  
28 does not identify what additional facts might be obtained that are essential to justify the opposition



1 to a motion for summary judgment. Bakerink v. Orthopaedic Assoc., 94 Nev. 428, 581 P.2d 9  
2 (1978).

3 In this case, Desert Aire complains that it needs some discovery regarding a series of topics.  
4 However, nothing Desert Aire claims it needs to find out are “essential to justify” its opposition to  
5 the judgment revoking Desert Aire’s registration certificate.

6 First, Desert Aire claims that it needs to find out “what exactly [the state] did” and “how they  
7 interpreted the statute.” *See* Motion for Reconsideration at 23:14. However, what the Division did  
8 is not in dispute and there is nothing to find out. All parties know that the Division issued a  
9 provisional registration certificate to Desert Aire. Similarly, it is irrelevant how the Division  
10 “interpreted the statute.” It is for the Court to decide the law. The Court has already interpreted  
11 N.R.S. § 453A.322(3)(a)(5) and determined that the Division was in error when it issued a  
12 provisional registration certificate to Desert Aire which failed to comply. Discovery, which is about  
13 finding out facts, will not change that.

14 Second, Desert Aire claims that it needs to depose the City of Las Vegas “regarding their  
15 policies” and obtain full copies of all applications of other similarly situated parties including  
16 Plaintiff. *See* Motion for Reconsideration at 23:15-16. However, such information is, likewise, not  
17 “essential to justify” the defense of Desert Aire. The Court has already determined that Desert Aire  
18 did not comply with N.R.S. § 453A.322(3)(a)(5). Thus, it is irrelevant to Desert Aire, whether  
19 anyone else was in compliance. It could not keep its own certificate if it was in violation of the law.  
20 There is no issue of fact that Desert Aire did not comply with the law, regardless of what other  
21 applicants may or may not have done.<sup>9</sup> Therefore, additional discovery could not change the  
22 outcome.

23 Finally, Desert Aire argues that it needs to conduct the depositions of Plaintiff regarding:  
24 (1) why “they waited so long in bringing action” against Desert Aire, or, in other words; (2) why  
25

---

26 <sup>9</sup> Further, the undisputed evidence actually shows that (other than three (3) unidentified applicants), the only  
27 applicant who did not satisfy N.R.S. § 453A.322(3)(a)(5) like Desert Aire, yet received a provisional registration  
28 certificate was NuLeaf, which has also had its certificate judicially stripped. Thus, Desert Aire is not going to find  
through such proposed discovery another applicant who failed to satisfy N.R.S. § 453A.322(3)(a)(5) yet received a  
certificate, in order to cry unfairness or an unequal result, if that is their aim.

1 Plaintiff dismissed the action against Desert Aire then brought it back “many months later.” *See*  
2 Motion for Reconsideration at 23:16-18. However, as explained above, none of this information is  
3 relevant to whether or not Desert Aire complied with NRS § 453A.322(3)(a)(5) and whether or not  
4 the Division exceeded its authority when it issued the Provisional Certificate to Desert Aire.  
5 Therefore, there is no basis to reconsider the Order to allow for discovery under N.R.C.P. 56(f).

6 **D. THE MATTER SHOULD NOT BE STAYED.**

7 In deciding whether to issue a stay, the Nevada Supreme Court considers the following  
8 factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied;  
9 (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3)  
10 whether respondent/real party in interest will suffer irreparable or serious injury if the stay is  
11 granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ  
12 petition. Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 657, 6 P.3d 982,  
13 986 (2000).

14 Other courts have observed that the most important factor in determining whether a motion  
15 for a stay pending an appeal is the appellant’s likelihood of success on the merits. *See Shrink*  
16 Missouri Government PAC v. Adams, 151 F.3d 763 (8<sup>th</sup> Cir. 1998); Jones v. Caruso, 569 F.3d 258  
17 (6<sup>th</sup> Cir. 2009).

18 In this case, the object of the appeal will not be defeated if a stay is not imposed. The Order  
19 at issue revoked Desert Aire’s registration certificate. Assuming Desert Aire is able to win a reversal  
20 on appeal, Desert Aire could simply be reissued its registration certificate. This would not run afoul  
21 of the other MME rules and regulations or the allotment of twelve (12 )certificates to the City of Las  
22 Vegas in 2014. The Court did not reissue the registration certificate to Plaintiff or anyone else, so  
23 it is still available.

24 Further, Desert Aire will not be irreparably harmed if a stay is denied. If Desert Aire loses  
25 on appeal, then the fact that its registration certificate should have never been issued will be  
26 confirmed. On the other hand, if Desert Aire wins a reversal on appeal, then it will have simply lost  
27 potential business for a period of time. Generally, harm is only “irreparable” if it cannot adequately  
28

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1 be remedied by compensatory damages. See University System v. Nevadans for Sound  
2 Government, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

3 More importantly, however, Desert Aire does not enjoy a “likelihood of success on the  
4 merits.” The Court entered its Order after substantial briefing and argument. Desert Aire’s  
5 registration certificate was ultimately revoked because it had failed to comply with N.R.S. §  
6 453A.322(3)(a)(5). For the reasons explained above, Desert Aire is not likely to obtain a reversal  
7 on appeal. Therefore, no stay should issue.

8 IV.

9 CONCLUSION

10 For the foregoing reasons, the Motion for Reconsideration should be denied, as should Desert  
11 Aire’s alternative Motion for Stay.

12 DATED this 2nd day of May, 2016.

SMITH & SHAPIRO, PLLC

13 /s/ James E. Shapiro  
14 James E. Shapiro, Esq.  
15 Nevada Bar No. 7907  
16 Sheldon A. Herbert, Esq.  
17 Nevada Bar No. 5988  
18 2520 St. Rose Parkway, Suite 220  
19 Henderson, NV 89074  
20 *Attorneys for Plaintiff*  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 2<sup>nd</sup> day of May, 2016, I served a true and correct copy of the forgoing **OPPOSITION TO 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**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer  
An employee of SMITH & SHAPIRO, PLLC

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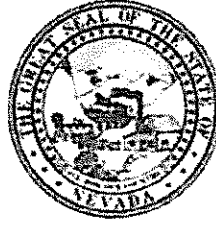
**EXHIBIT 1**

**EXHIBIT 1**

STATE OF NEVADA

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*



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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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	<i>Telephone Number</i>			
	Area Code	Number	Extension	
5	<i>Facsimile Number</i>			
	Area Code	Number	Extension	
6	<i>Toll Free Number</i>			
	Area Code	Number	Extension	
7	<i>Contact Person for providing information, signing documents, or ensuring actions are taken as per Section 23 of LCB File No. R004-14A</i>			
	Name:			
	Title:			
	Address:			
	Email Address:			
8	<i>Telephone Number for Contact Person</i>			
	Area Code:	Number:	Extension:	
9	<i>Facsimile Number for Contact Person</i>			
	Area Code:	Number:	Extension:	
10	<i>Contact Person Signature</i>			
	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><b>Marijuana infused products</b></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><b>May</b></i>	Has the meaning ascribed to it in NRS 0.025.
<i><b>Medical marijuana dispensary</b></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><b>Medical marijuana establishment</b></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><b>Medical marijuana establishment agent</b></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><b>Medical marijuana establishment agent registration card</b></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><b>Medical marijuana establishment registration certificate</b></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><b>Medical use of marijuana</b></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><b>Must</b></i>	Has the meaning ascribed to it in NRS 0.025.
<i><b>NAC</b></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> .

<b><i>Non-Identified Response</i></b>	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.
<b><i>NRS</i></b>	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> .
<b><i>Shall</i></b>	Has the meaning ascribed to it in NRS 0.025.
<b><i>State</i></b>	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:

<b>Part I – 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

### 5.2.2. **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:

<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:	
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:

<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 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	<b>NRS 453A.328(1) The total financial resources of the applicant, both liquid and illiquid</b>	<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><b>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</b></p> <p><b>453A.328(3) The educational achievements of the persons who are proposed to be owners, officers or board members of the</b></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><b>proposed medical marijuana establishment</b></p> <p><b>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</b></p>	<ul style="list-style-type: none"> <li>• A resume, including educational achievements, for each owner, officer and board member.</li> </ul>	
III	<p><b>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</b></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><b>453A.328(6) The likely impact of the proposed medical marijuana establishment on the community in which it is proposed to be located</b></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><b>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</b></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><b>453A.328(8) Whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale</b></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	<b>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</b>	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.	<b>25</b>
<b>Application Total</b>			<b>250</b>
		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.	<b>Unweighted</b>

- 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.

<b>Part I - Identified Criteria Response:</b>	<b>Completed</b>
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.	
Confirmation of the ownership or authorized use of the property as a medical marijuana establishment <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>	
Documentation from a financial institution in this state, or in any other state or the District of Columbia, which demonstrates: <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> <i>Please note: If applying for more than one Medical Marijuana establishment certificate; available funds must be shown for each establishment application.</i>	
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.	
A financial plan which includes: <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>	
\$5,000.00 application fee as per Section 26(1) of LCB File No. R004-14A  <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>	
<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>	<b>Completed</b>
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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*Director*

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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.

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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

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

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Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



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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

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*Director*

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

BRIAN SANDOVAL  
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*Director*

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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			



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**ATTACHMENT D – CHILD SUPPORT VERIFICATION FORM**

BRIAN SANDOVAL  
*Governor*

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*Director*

STATE OF NEVADA



RICHARD WHITLEY, MS  
*Administrator*

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*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**  
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STATE OF NEVADA



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

BRIAN SANDOVAL  
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*Director*

STATE OF NEVADA



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**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**  
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*Director*

**STATE OF NEVADA**



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

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*Director*

STATE OF NEVADA



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*Chief Medical Officer*

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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: <i>*This must be a Nevada address and cannot be a P.O. Box.</i>			
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

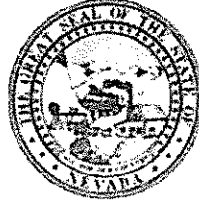
\_\_\_\_\_  
PROPERTY OWNER NAME

\_\_\_\_\_  
TITLE

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*Governor*

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*Director*

STATE OF NEVADA



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*Chief Medical Officer*

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

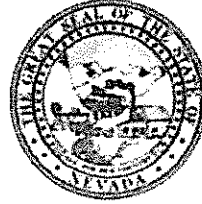
4150 Technology Way, Suite 300  
Carson City, Nevada 89706  
Telephone: (775) 684-4200 - Fax: (775) 684-4211

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

BRIAN SANDOVAL  
Governor

MICHAEL J. WILLDEN  
Director

STATE OF NEVADA



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Administrator

TRACEY D. GREEN, MD  
Chief Medical Officer

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**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:



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**ATTACHMENT H – IDENTIFIER LEGEND FORM**



**EXHIBIT 2**

**EXHIBIT 2**



LAS VEGAS  
CITY COUNCIL

CAROLYN G. GOODMAN  
MAYOR

STAVROS S. ANTHONY  
MAYOR PRO TEM

LOIS TARKANIAN  
STEVEN D. ROSS  
RICKI Y. BARLOW  
BOB COFFIN  
BOB BEERS

ELIZABETH N. FRETWELL  
CITY MANAGER

October 30, 2014

Chad Westom  
Bureau Chief, Department of Health and Human Services  
Division of Public & Behavioral Health  
4150 Technology Way, Suite 200  
Carson City, NV 89706

Dear Chad,

Las Vegas Municipal Code 6.95.080(D) – Medical Marijuana Establishments, requires notification to the State regulating authority if an applicant for a medical marijuana establishment has been found in conformance with land use restrictions and if the application to the City is eligible to be considered for a medical marijuana establishment business license. On October 28 and 29, 2014, the Las Vegas City Council deliberated on applications presented to the City for dispensaries, cultivation and production facilities. The attached list for each type of establishment is the result of Council actions on each application.

Please note that any application that resulted in a denial has also been denied land use for the proposed location and their application was found not to be in accordance with City Code and is not eligible for a business license for the proposed establishment. Those applications that are noted as approved, received land use and could be considered for a business license at such future time as they might receive a provisional certificate from your agency and have complied with all regulations and requirements of a privileged business license application.

During proceedings, it was noted that current definitions in the land use code restrict production and cultivation facilities from being located within a structure which houses any other type of use. Therefore, you will note on the attached lists for production and cultivation that several applications were tabled by the Council until such time as the Council can deliberate on a change in our land use code to allow the co-location of such facilities. Please do not consider a "tabled" item as an approval or denial.

Please consider the attached three tables as the required notification under LVMC 6.95.080.

Sincerely,

A handwritten signature in black ink, reading "Karen E Duddleston".

Karen E Duddleston  
Business Licensing Manager  
Department of Planning

KD:me  
Attc: a/s

CITY OF LAS VEGAS  
DEPARTMENT OF PLANNING  
BUSINESS LICENSING DIVISION  
DEVELOPMENT SERVICES CENTER  
333 NORTH RANCHO DRIVE  
6TH FLOOR  
LAS VEGAS, NEVADA 89108

VOICE 702.229.6281  
FAX 702.382.6642  
TTY 7-1-1  
[www.lasvegasnevada.gov](http://www.lasvegasnevada.gov)

**City of Las Vegas  
Medical Marijuana Compliance Permits**

**CULTIVATION**

<b>Name &amp; Address of Establishment</b>	<b>Type</b>	<b>Status</b>
Acres Medical, LLC 2320 Western Ave.	Cultivation	TABLED
Boulevard Medical, LLC 2900 Highland Dr., Bldg. 20	Cultivation	APPROVED
Compassionate Team of Las Vegas, LLC 2601 Highland Dr.	Cultivation	TABLED
Cannabis Renaissance Group 2702 S. Highland Dr.	Cultivation	DENIED
Herbal Choice, Inc. 800 W. Mesquite Ave.	Cultivation	DENIED
Infinite Wellness Incorporated 2750 Highland Dr., Unit E	Cultivation	TABLED
The Medmen of Nevada 2, LLC d/b/a Medmen 2908 S. Highland Dr.	Cultivation	TABLED
Nuleaf CLV Cultivation 1018 S. Commerce St.	Cultivation	APPROVED
RG Highland Enterprises, Inc. d/b/a Highland Medical 1916 S. Highland Ave.	Cultivation	APPROVED

10/30/14

**City of Las Vegas**  
**Medical Marijuana Compliance Permits**

**PRODUCTION**

Name & Address of Establishment	Type	Status
Acres Medical, LLC 2320 Western Ave.	Production	TABLED
Boulevard Medical, LLC 2900 Highland Dr., Bldg. 20	Production	TABLED
Cannabis Renaissance Group 2706 S. Highland Dr.	Production	DENIED

10/30/14

**City of Las Vegas  
Medical Marijuana Compliance Permits**

**DISPENSARY**

**THE FOLLOWING APPLICATIONS WERE APPROVED**

<b>Name &amp; Address of Establishment</b>	<b>Type</b>	<b>Status</b>
Acres Medical, LLC 2320 Western Ave.	Dispensary	APPROVED
Blossum Group, LLC 810 S. 4 <sup>th</sup> St.	Dispensary	APPROVED
Boulevard Medical, LLC 1600 S. Las Vegas Blvd. Stes. 150 & 160	Dispensary	APPROVED
Buffalo Center Medical Advocates 1591 N. Buffalo Dr. Ste. 130	Dispensary	APPROVED
Clark NMSD, LLC d/b/a NuVeda 1320 S. 3 <sup>rd</sup> St.	Dispensary	APPROVED
Commerce Park Medical 1112 S. Commerce St.	Dispensary	APPROVED
Compassionate Care of Las Vegas, LLC 2601 Highland Dr.	Dispensary	APPROVED
Diversified Modalities Retail Ltd. 5350 W. Charleston Blvd.	Dispensary	APPROVED
GB Sciences Nevada, LLC d/b/a GB Sciences 921 S. Las Vegas Blvd. Ste. 100	Dispensary	APPROVED
Golden Wellness, Inc. 2230 W. Bonanza Rd.	Dispensary	APPROVED
GreenMart of Nevada, LLC 1512 S. Main St.	Dispensary	APPROVED
Integral Associates, LLC d/b/a Great Basin Care 2307 S. Las Vegas Blvd.	Dispensary	APPROVED
MediFarm, LLC d/b/a Blum LV 1921 Western Ave.	Dispensary	APPROVED
Natural Apothecary, LLC 5801 W. Craig Rd. 120	Dispensary	APPROVED
Natural Medicine, LLC 2411 Western Ave.	Dispensary	APPROVED
Naturex II, LLC d/b/a Naturex 1860 Western Ave.	Dispensary	APPROVED
Nevada Wellness Center, LLC 3200 S. Valley View Blvd.	Dispensary	APPROVED
Nevada Wellness Project 823 S. 3 <sup>rd</sup> St.	Dispensary	APPROVED
Paradise Wellness Center, LLC d/b/a Las Vegas Releaf 2242-2246 Paradise Rd.	Dispensary	APPROVED

Physis One 231 W. Charleston Blvd. 110 & 120	Dispensary	APPROVED
Premium Produce City, LLC 707 N. Main St.	Dispensary	APPROVED
Qualcan of Las Vegas 546 N. Eastern Ave. 155-160	Dispensary	APPROVED
Red Rock Wellness, LLC 604 N. Main St.	Dispensary	APPROVED
Samantha, Inc. d/b/a Samantha's Remedies 3500 W. Sahara Ave.	Dispensary	APPROVED
Serenity Wellness Center 1800 S. Industrial Rd. 102, 160 & 180	Dispensary	APPROVED
Silver Sage Wellness 4626 W. Charleston Blvd.	Dispensary	APPROVED
THC Nevada, LLC d/b/a Welleaf 1800 Western Ave.	Dispensary	APPROVED

**THE FOLLOWING APPLICATIONS WERE DENIED**

Name & Address of Establishment	Type	Status
Cannabis Renaissance Group 2706 S. Highland Dr.	Dispensary	DENIED
Encanto Green Cross 5310 W. Sahara Ave. B	Dispensary	DENIED
Global Green Enterprises d/b/a 99 High Desert Healing 827 S. Las Vegas Blvd.	Dispensary	DENIED
Green Leaf Medical, LLC 3190 W. Sahara Ave.	Dispensary	DENIED
Herbal Cholge, Inc. 800 W. Mesquite Ave.	Dispensary	DENIED
M'Life Wellness, LLC 2800 Highland Dr.	Dispensary	DENIED
The Medmen of Nevada 2, LLC d/b/a Medmen 2908 S. Highland Dr.	Dispensary	DENIED
Nuleaf CLV Dispensary 4500 W. Charleston Blvd.	Dispensary	DENIED
Primo Dispensary 3120 S. Valley View Blvd. A	Dispensary	DENIED
TopPharm, LLC 1615 S. Las Vegas Blvd.	Dispensary	DENIED



THE FOLLOWING APPLICATIONS WERE WITHDRAWN BY THE APPLICANT

Name & Address of Establishment	Type	Status
Desert Aire Wellness, LLC d/b/a Desert Aire of Las Vegas 420 E. Sahara Ave.	Dispensary	Withdrawn by Applicant
GreenMart of Nevada Charleston, LLC 1925 W. Charleston Blvd.	Dispensary	Withdrawn by Applicant
Herbal Choice, Inc. 5243 W. Charleston Blvd.	Dispensary	Withdrawn by Applicant
Over the Rainbow 2300 N. Rainbow Blvd. 118-122	Dispensary	Withdrawn by Applicant
Premium Produce City, LLC 215 N. 3 <sup>rd</sup> St.	Dispensary	Withdrawn by Applicant
TopPharm, LLC 7580 W. Sahara Ave.	Dispensary	Withdrawn by Applicant

**EXHIBIT 3**

**EXHIBIT 3**

# MEDICAL MARIJUANA DISPENSARIES

## Scores and Rankings by Jurisdiction

\*Revised 2/5/2015 3pm

\*Results not shown below reflect the confidentiality of NRS 453A.700 and applicant did not provide a consent to release.

### CARSON CITY

Rank	Business Name	Score	Provisional License Yes / No
1	Nevada Organix LLC	209.83	Y
2	CONSENT TO RELEASE NOT PROVIDED		Y
3	NNV Service III, LLC	193.35	N
4	NNV Services II, LLC	193.01	N
5	5Seat Investments LLC	186.66	N
6	CapWell, LLC	178.3	N
7	BioNeva Innovations of Carson City, LLC	161.36	N
8	CONSENT TO RELEASE NOT PROVIDED		N
9	The MedMen of Nevada 2, LLC	150.99	N
10	CONSENT TO RELEASE NOT PROVIDED		N
11	Green Grasshaper	15.67	N

### CHURCHILL COUNTY

Rank	Business Name	Score	Provisional License Yes / No
1	CONSENT TO RELEASE NOT PROVIDED		Y

### CLARK COUNTY- HENDERSON

Rank	Business Name	Score	Provisional License Yes / No
1	Livfree Wellness, LLC	208.3	Y
2	Integral Associates II, LLC	204.03	Y
3	Clear River, LLC	201.8	Y
4	CONSENT TO RELEASE NOT PROVIDED		Y
5	WaveSeer of Nevada	199.38	Y
6	Henderson Organic Remedies LLC	194	N
7	Nevada Wellness Center	193.62	N
8	NuLeaf Henderson Dispensary, LLC	192.37	N
9	CONSENT TO RELEASE NOT PROVIDED		N
10	Gravitas Henderson LLC	182.4	N
11	Sagebrush Wellness, LLC	172.66	N
12	Serenity Wellness Center, LLC	169.13	N
13	360 Global Sciences, Inc.	164.71	N
14	CONSENT TO RELEASE NOT PROVIDED		N
15	BioNeva Innovations of Henderson, LLC	163.03	N
16	CONSENT TO RELEASE NOT PROVIDED		N
17	The MedMen of Nevada 2, LLC	161	N
18	CONSENT TO RELEASE NOT PROVIDED		N
19	Twelve Twelve, LLC	147.76	N
20	Green Life Dispensary, Inc.	144.93	N
21	Agua Street LLC	142.27	N
22	CONSENT TO RELEASE NOT PROVIDED		N
23	Via Vida LLC	128.69	N
24	Unifern	125.63	N
25	Unifern	124	N
26	Greenway Health Community, LLC	112.23	N
27	CONSENT TO RELEASE NOT PROVIDED		N

### CLARK COUNTY- LAS VEGAS

Rank	Business Name	Score	Provisional License Yes / No
1	Nevada Wellness Center	198.62	Y
2	Medifarm, LLC	197.72	Y
3	NuLeaf CLV Dispensary, LLC	189.71	Y
4	CONSENT TO RELEASE NOT PROVIDED		Y
5	Silver Sage Wellness, LLC	187.01	Y
6	Paradise Wellness	186.84	Y
7	Clark NMSD, LLC DBA NuVeda	185.45	Y
8	CONSENT TO RELEASE NOT PROVIDED		Y
9	CONSENT TO RELEASE NOT PROVIDED		Y
10	Desert Aire Wellness	172.33	Y
11	Serenity Wellness Center, LLC	171.8	Y
12	Nevada Wellness Project, LLC	169	Y
13	CONSENT TO RELEASE NOT PROVIDED		N
14	Samantha's Remedies	163.26	N
15	Nevada Cares, LLC	161.56	N
16	CONSENT TO RELEASE NOT PROVIDED		N
17	CONSENT TO RELEASE NOT PROVIDED		N
18	CONSENT TO RELEASE NOT PROVIDED		N
19	THC Nevada LLC	154.67	N
20	CONSENT TO RELEASE NOT PROVIDED		N
21	Red Rock Wellness LLC	153.96	N
22	CONSENT TO RELEASE NOT PROVIDED		N
23	CONSENT TO RELEASE NOT PROVIDED		N
24	CONSENT TO RELEASE NOT PROVIDED		N
25	CONSENT TO RELEASE NOT PROVIDED		N
26	CONSENT TO RELEASE NOT PROVIDED		N
27	QualCan of Las Vegas, LLC	151.29	N
28	Cannabis Renaissance Group LLC	150.65	N
29	CONSENT TO RELEASE NOT PROVIDED		N
30	CONSENT TO RELEASE NOT PROVIDED		N

# MEDICAL MARIJUANA DISPENSARIES

## Scores and Rankings by Jurisdiction

\*Revised 2/5/2015 3pm

31	The MedMen of Nevada 2, LLC	148.33	N
32	CONSENT TO RELEASE NOT PROVIDED		N
33	Physis One LLC	143.82	N
34	Buffalo Center Medical Advocates	142.5	N
35	Primo Dispensary	137.33	N
36	CONSENT TO RELEASE NOT PROVIDED		N
37	CONSENT TO RELEASE NOT PROVIDED		N
38	Diversified Modalities Retail Ltd.	124.66	N
39	Green Leaf Farms Holdings Inc.	115.27	N
40	M'Life Wellness, LLC	113.67	N
41	CONSENT TO RELEASE NOT PROVIDED		N
42	Blossum Group, LLC	111.67	N
43	CONSENT TO RELEASE NOT PROVIDED		N
44	CONSENT TO RELEASE NOT PROVIDED		N
45	CONSENT TO RELEASE NOT PROVIDED		N
46	Valley Healing Group Inc.	96.53	N
47	CONSENT TO RELEASE NOT PROVIDED		N
48	CONSENT TO RELEASE NOT PROVIDED		N
49	CONSENT TO RELEASE NOT PROVIDED		N

### CLARK COUNTY- MESQUITE

Rank	Business Name	Score	Provisional License Yes / No
1	CONSENT TO RELEASE NOT PROVIDED		Y

### CLARK COUNTY- NORTH LAS VEGAS

Rank	Business Name	Score	Provisional License Yes / No
1	WaveSeer of Las Vegas	197.71	Y
2	Tryke Companies SO NV, LLC	192.97	Y
3	Cheyenne Medical, LLC	191.07	Y
4	Clark NMSD, LLC DBA NuVeda	187.1	Y
5	Green Therapeutics LLC	178.33	N
6	NLV-1 LLC	164.2	N
7	360 Global Sciences, Inc.	163.37	N
8	Mountainside Health Center NV LLC	160.98	N
9	NLV Health and Wellness LLC	154	N
10	CONSENT TO RELEASE NOT PROVIDED		N
11	CONSENT TO RELEASE NOT PROVIDED		N
12	CONSENT TO RELEASE NOT PROVIDED		N
13	NLVD, LLC	137.94	N
14	Lone Mountain Partners, LLC	133.82	N
15	CONSENT TO RELEASE NOT PROVIDED		N
16	CONSENT TO RELEASE NOT PROVIDED		N
17	CONSENT TO RELEASE NOT PROVIDED		N
18	Greenway Health Community North, LLC	110.23	N
19	CONSENT TO RELEASE NOT PROVIDED		N
20	CONSENT TO RELEASE NOT PROVIDED		N
21	Medical Cannabis Healing LLC	78.01	N

### CLARK COUNTY- UNINCORPORATED CLARK COUNTY

Rank	Business Name	Score	Provisional License Yes / No
1	Tryke Companies SO NV, LLC	212.97	Y
2	CONSENT TO RELEASE NOT PROVIDED		Y
3	CONSENT TO RELEASE NOT PROVIDED		Y
4	MM Development Company, LLC	203.58	Y
5	Livfree Wellness, LLC	201.64	Y
6	Medifarm, LLC	201.04	Y
7	Medifarm, LLC	200.71	Y
8	Clear River, LLC	197.46	Y
9	CONSENT TO RELEASE NOT PROVIDED		Y
10	CONSENT TO RELEASE NOT PROVIDED		Y
11	CONSENT TO RELEASE NOT PROVIDED		Y
12	NuLeaf Clark Dispensary, LLC	189.03	Y
13	CONSENT TO RELEASE NOT PROVIDED		Y
14	CONSENT TO RELEASE NOT PROVIDED		Y
15	CONSENT TO RELEASE NOT PROVIDED		Y
16	Euphoria Wellness LLC	176.32	Y
17	Gravitas Nevada LTD	176.03	Y
18	CONSENT TO RELEASE NOT PROVIDED		Y
19	Just Quality LLC	172.86	N
20	Just Quality LLC	171.19	N
21	CONSENT TO RELEASE NOT PROVIDED		N
22	CONSENT TO RELEASE NOT PROVIDED		N
23	Polaris Dispensary, LLC	163.67	N
24	CONSENT TO RELEASE NOT PROVIDED		N
25	CONSENT TO RELEASE NOT PROVIDED		N
26	CONSENT TO RELEASE NOT PROVIDED		N
27	The MedMen of Nevada	151.67	N
28	QualCan, LLC	150.95	N
29	CONSENT TO RELEASE NOT PROVIDED		N
30	CONSENT TO RELEASE NOT PROVIDED		N
31	Las Vegas Wellness Center, Inc.	143.56	N
32	Global Harmony, LLC	141.26	N
33	Nevada Medical Marijuana Dispensary, Inc.	137.18	N
34	Camelot NV LLC	132.32	N
35	CONSENT TO RELEASE NOT PROVIDED		N

**MEDICAL MARIJUANA DISPENSARIES**  
**Scores and Rankings by Jurisdiction**  
\*Revised 2/5/2015 3pm

36	CONSENT TO RELEASE NOT PROVIDED		N
37	NXTGEN Wellness, LLC	117.01	N

NYE COUNTY			
Rank	Business Name	Score	Provisional License Yes / No
1	CONSENT TO RELEASE NOT PROVIDED		Y
2	MM Development Company, LLC	206.93	N
3	Nye Natural Medicinal Solutions, LLC	186.1	N
4	Options Medical Center Pahrump, LLC	166.96	N
5	NCMM, LLC	136.95	N
6	CONSENT TO RELEASE NOT PROVIDED		N

STOREY COUNTY			
Rank	Business Name	Score	Provisional License Yes / No
1	CONSENT TO RELEASE NOT PROVIDED		Y

WASHOE COUNTY- RENO			
Rank	Business Name	Score	Provisional License Yes / No
1	Livfree Wellness Reno, LLC	207	Y
2	CONSENT TO RELEASE NOT PROVIDED		Y
3	MediFarm I, LLC	203.68	Y
4	CONSENT TO RELEASE NOT PROVIDED		N
5	CONSENT TO RELEASE NOT PROVIDED		N
6	The Cannavative Group, LLC	193.37	N
7	NNV Services IV, LLC	191.99	N
8	CONSENT TO RELEASE NOT PROVIDED		N
9	NuLeaf Reno Dispensary, LLC	189.37	N
10	CapWell, LLC	171.23	N
11	NeVWA, LLC	156.66	N
12	The MedMen of Nevada 2, LLC	154.99	N
13	The Canopy Reno, Inc.	153.41	N
14	Naturally Nevada LLC	150.73	N
15	CONSENT TO RELEASE NOT PROVIDED		N
16	A New Leaf Wellness Center, LLC	146.6	N
17	High Sierra Holistics	122.05	N
18	CONSENT TO RELEASE NOT PROVIDED		N
19	Wells and Taylor, LLC	88.99	N
20	Herbal Care, LLC	83.91	N
21	CONSENT TO RELEASE NOT PROVIDED		N
22	CONSENT TO RELEASE NOT PROVIDED		N
23	Green Tree Therapy, LLC	62.69	N
24	CONSENT TO RELEASE NOT PROVIDED		N
25	Green Grasshaper	21.67	N

WASHOE COUNTY- SPARKS			
Rank	Business Name	Score	Provisional License Yes / No
1	Silver State Relief, LLC	225.19	Y
2	Tryke Companies Reno, LLC	202.03	Y
3	Greenleaf Wellness, Inc.	194	N
4	NNV Services IV, LLC	191	N
5	The MedMen of Nevada 2, LLC	152.33	N
6	Common Sense Botanicals	143.97	N
7	CONSENT TO RELEASE NOT PROVIDED		N
8	CONSENT TO RELEASE NOT PROVIDED		N
9	CONSENT TO RELEASE NOT PROVIDED		N

WASHOE COUNTY- UNINCORPORATED WASHOE			
Rank	Business Name	Score	Provisional License Yes / No
1	Nevada Organix LLC	212.49	Y
2	Tryke Companies Reno, LLC	204.69	Y
3	NuLeaf Incline Dispensary, LLC	191.7	Y
4	CONSENT TO RELEASE NOT PROVIDED		Y
5	SSeat Investments LLC	188.34	Y
6	Washoe Dispensary, LLC	173.67	N
7	BioNeva Innovations of Washoe County, LLC	163.04	N
8	CONSENT TO RELEASE NOT PROVIDED		N
9	CONSENT TO RELEASE NOT PROVIDED		N
10	CONSENT TO RELEASE NOT PROVIDED		N
11	CONSENT TO RELEASE NOT PROVIDED		N

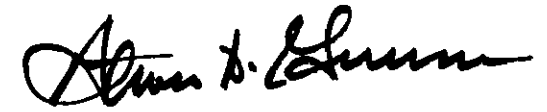
**EXHIBIT 4**

**EXHIBIT 4**

6.95.080 - Council action on permits.

- (A) The City Council will review all applications for medical marijuana compliance permits that have been deemed complete by the Director. Such review shall occur simultaneously with the review of the applicant's special use permit application for the proposed medical marijuana establishment.
- (B) The City Council may approve, deny or take such other action with respect to the Director's recommendations on applications for medical marijuana compliance permits as it considers appropriate. The burden of showing the qualifications, acceptability or fitness for such permit and the location is upon the applicant.
- (C) The City Council shall deny any permit if the permit will not be in the best interest of the welfare, health, or safety of the City; or if the application or location is determined by the Council to not be suitable under this Chapter or the requirements of LVMC Title 19. In considering whether to approve or deny a medical marijuana compliance permit, the City Council shall consider the identity, character, and background of the applicant, capacity, capitalization, past business practices of the applicant, operational plan, organizational structure, environmental sustainability and mitigation plans, interior floor plans of the buildings, odor control systems and suitability of the building for the use proposed, site plan as to parking, traffic movement and aesthetics; impact on the surrounding neighborhood; the type and degree of security personnel and facilities and any other factors that in his or her discretion deems necessary to the safety, peace, order and welfare of the public.
- (D) Upon approval of a medical marijuana compliance permit, the Director shall prepare a notice to the State regulating authority pursuant to NRS 453A.322.3(a)(5), outlining that the proposed location has been found in conformance with land use and zoning restrictions and that the applicant is eligible to be considered for a medical marijuana establishment business license. Issuance of such a notice does not preclude the City from conducting further review of an applicant's proposed medical marijuana establishment for compliance with land use, zoning and building requirements, in the context of evaluation of an application for a medical marijuana establishment business license pursuant to LVMC Chapter 6.06 and this Chapter.
- (E) If the City Council denies a medical marijuana compliance permit application, or the State regulating authority fails to rank the application presented within limits of the number of medical marijuana establishments allowed within the City, as established by state law, the applicant may reapply for a medical marijuana compliance permit no sooner than one year from the date of the application period in which the application was filed.
- (F) Any medical marijuana compliance permit is considered surrendered by the applicant if a business license has not been granted within twelve months of the issuance of a registration certificate issued by the State regulating authority.

(Ord. No. 6324, § 1, 6-4-14)



CLERK OF THE COURT

MRCN  
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*Attorneys for Desert Aire Wellness, LLC*

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 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.

CASE NO. A-15-728448-C

DEPT. NO. I

**REPLY IN SUPPORT OF MOTION TO  
ALTER OR AMEND JUDGMENT,  
COUNTERMOTION FOR SUMMARY  
JUDGMENT OR IN THE ALTERNATIVE  
A STAY PENDING AN APPEAL<sup>1</sup>**

**I. A SUPREME COURT OPINION ISSUED BY THE CURRENT SEVEN  
SITTING JUSTICES MAKES IT CLEAR THE JUDGMENT SHOULD BE  
REVERSED UNDER THE DOCTRINE OF SUBSTANTIAL  
COMPLIANCE.**

First, it should be noted that Defendants substantial compliance argument raised in its

<sup>1</sup> The motion was filed as a Motion for Reconsideration because no judgment had been entered. Now that the Judgment has been entered Defendant wants to make it clear that this is a Motion to Alter or Amend Judgment.



1 motion for reconsideration was not raised by Defendant's prior counsel in conjunction with the  
2 original motions. See Exh. 1 Defendant's opposition filed by attorney Singer. Second, it should  
3 be pointed out that based on a wealth of Supreme Court cases holding substantial compliance is  
4 appropriate under circumstances like those here Defendant believes it would be a mistake to  
5 allow the current judgment to stand. Accordingly, reconsideration is appropriate. Indeed, this is  
6 true with respect to all the arguments raised in this brief. Since, with the exception of the laches  
7 argument, none of the authorities or evidence backing up any of the other arguments were  
8 included in the original opposition by Singer.

9       Regarding substantial compliance it is undisputed that Defendant did substantially comply  
10 with N.R.S. 453 A.322. That is the statute Plaintiff alleges Defendant did not comply with  
11 entitling it to summary judgment. The statute states that, "a person who wishes to operate a  
12 medical marijuana establishment must submit to the division an application on a form prescribed  
13 by the division." It is undisputed that Defendant submitted an application on the form prescribed  
14 by the division and submitted the required information on that form. Therefore, how could one  
15 say the Defendant did not substantially comply with the statute merely because it did not provide  
16 one piece of information (that Defendant still does not believe was required for the application to  
17 be considered) in a subsection of the statute. The Nevada Supreme Court has repeatedly stated the  
18 Court should not technically enforce statutes where there has been substantial compliance.  
19 Especially, where policy and equity principals dictate allowing substantial compliance.

20       In *Markowitz v. Saxon Special Servicing* 129 Nev. Adv. Op. 69, 310 P.3d 569 (2013) the  
21 Court held that although a statute required a bank to come to a foreclosure mediation with an  
22 appraisal no more than 60 days old should not have lost the case merely because its appraisal was  
23 83 days old. The Markowitz Court stated a Court should consider policy and equity principals  
24 along with the language of the statute as a whole to determine whether it should allow technical  
25 deviation from form requirements of a statute. Id at 571, 572.

26       Similarly, in *Schleining v. Cap One, Inc.* 130 Nev. Adv. Rep. 36, 326 P.3d 4 (2014) the  
27 Supreme Court noted that where the purpose of the statute has been met by the person, allowing  
28 substantial compliance is proper. See also, *Nevada Equities v. Willard Pease Drilling Co.*, 84

1 Nev. 300, 440 P.2d 122 (1968). ("The claimant substantially complied with the licensing scheme  
2 under both chapters. It is not suggested that Willard Pease Drilling Co. was wanting in  
3 experience, financial responsibility, or indeed, in any particular detriment to the safety and  
4 protection of the public. It had passed the scrutiny of the contractors board in these respects and  
5 was issued a license. We shall not condone a forfeiture in the absence of any ascertainable public  
6 policy requiring us to do so.") Id at 303. Here, like in the cases cited above, when taking into  
7 account the purpose of the statute, the policy of the statute and equity principals it is clear the  
8 Defendant should prevail. Otherwise it would suffer forfeiture.

9 In this case Defendant filed its application on the State required form and included every  
10 piece of information required on that form. The application requirements, format and content state  
11 as follows:

12 5.1.7. For ease of evaluation, the application must be presented in a format that  
13 corresponds to and references sections outlined within this submission  
requirements section and must be presented in the same order.

14 Exh. 2.

15 Thus, not only did the statute state that the application must be on the State required form  
16 but that form further stated that all the information correspond to certain tabs. The only tab on the  
17 form dealing with local approvals was section 5.12.13 which required a professionally prepared  
18 survey demonstrating the applicant has satisfied all the requirements of N.R.S. 453A.322  
19 (3)(a)(2)(II). Although not necessary since the tab was probably not applicable Defendant in fact  
20 provided such a survey. Coincidentally, that survey actually contained virtually the same  
21 information required in the subsection cited by Plaintiff herein since the most important zoning  
22 requirements for the City of Las Vegas (1,000 feet from Schools and 300 feet from Community  
23 Centers) were the exact same as the States requirement. Which is again why this is much to do  
24 about nothing.

25 To repeat how could one argue that Plaintiff did not substantially comply with the statute  
26 when the statute states that the application must be on the State's prescribed form, Defendant  
27 provided all the information requested on the State form AND the State form specifically stated  
28 that any additional information should not be included since it would not be reviewed or

1 evaluated. Id at 5.1.12.

2 Plaintiff alleges that Defendant should have provided some additional information that  
3 was not on the State's prescribed form pursuant to N.R.S. 322 (3)(a)(5). Specifically proof that  
4 Defendant's medical marijuana facility complied with the City of Las Vegas' medical marijuana  
5 zoning restrictions. It is important to note that subsection does not require the Defendant or any  
6 applicant to provide proof of licensure by the City. Instead, the subsection merely requires the  
7 applicant to prove that it meets the local jurisdictions medical marijuana zoning restrictions. The  
8 purpose of subsection 5 is not to require proof that a license has been issued by the City of Las  
9 Vegas. The subsection states that if the City, Town or County has enacted marijuana  
10 establishment zoning restrictions then the applicant must either provide proof of licensure from  
11 the local government authority OR "a letter from the applicable local governmental authority  
12 certifying that the proposed medical marijuana establishment is in compliance with those  
13 restrictions." Thus, the purpose of the statute was for the applicant to show that it met the City of  
14 Las Vegas specific medical marijuana zoning restrictions.

15 It is undisputed the Defendant's facility met the City of Las Vegas medical marijuana  
16 zoning restrictions. Thus, although it did not provide a letter from the City of Las Vegas stating  
17 that its facility met the City of Las Vegas' zoning restrictions or a license indicating its facility  
18 met the City of Las Vegas medical marijuana zoning restrictions it did in fact meet the medical  
19 marijuana zoning restrictions from the City of Las Vegas. See SUP approval attached to  
20 Defendants motion.

21 Thus, like in *Nevada Equities v. Willard Pease Drilling Co.* the safety and protection of  
22 the public is not at issue since in fact the facility did meet all the zoning requirements.  
23 Accordingly, pursuant to the Nevada Supreme Court authority cited above the Court should not  
24 condone a forfeiture.

25 This is especially true since Defendant did in fact provide in its application proof that its  
26 facility met the City of Las Vegas' zoning restrictions requiring its facility to be at least 1,000 feet  
27 from any school and 300 feet from any community facility such as a church/house of worship.  
28 Defendant included in its application a letter from a licensed surveyor showing these

1 requirements were met. This letter was the equivalent of a City of Las Vegas letter (The City of  
2 Las Vegas never sent any letter on anyone's behalf) since this is what the City of Las Vegas  
3 required each applicant to include in its application concerning the applicants meeting the medical  
4 marijuana zoning restrictions. This was the best anyone could do.

5 According to a literal reading of N.R.S. 453 A.322 (3)(a)(5) EACH APPLICANT  
6 WOULD HAVE HAD TO HAVE SUBMITTED AT THE TIME OF ITS APPLICATION proof  
7 of licensure from the City of Las Vegas or a letter from the City of Las Vegas certifying that the  
8 proposed medical marijuana establishment was in compliance with the City of Las Vegas' zoning  
9 restrictions and satisfied all applicable building requirements. This would have been impossible to  
10 achieve for anyone. First, at the time the applications were submitted no entity had received a  
11 license (the statute does not define what type of license) from the City of Las Vegas. Second, the  
12 City of Las Vegas did not issue any letters certifying the proposed medical marijuana  
13 establishments were in compliance with the zoning restrictions but instead required the applicant  
14 to go get a letter from a licensed surveyor stating the requirements were met. The Defendants  
15 submitted such a letter.

16 The State accepted the application of Defendant and never informed Defendant that its  
17 application had been denied or was missing any information. Indeed, if the State Division did not  
18 approve the application it had an affirmative duty to inform Defendant its application had not  
19 been approved. N.A.C. 453A322 (4). No disapproval letter was ever sent. Instead the State  
20 approved the application. Thereafter, Defendant got preliminary City of Las Vegas approval, the  
21 Defendant spent hundreds of thousands of dollars building its medical marijuana facility, the  
22 Defendant got final City and State approval at the end of 2015, spent significant sums of money  
23 opening for business, on marketing and advertising and the Defendant's principals spent several  
24 years of their life without pay to open the facility.

25 Thus, the facts are that the Defendant submitted a lengthy application containing an  
26 exhaustive list of information on the form prescribed by the State as required by the statute in  
27 question and a corresponding Nevada Administrative Code section. Plaintiff's argument is that  
28 even though Defendant complied with submitting the 20 or so items on the application it missed

1 one. Defendant denies this but even if it were true it clearly substantially complied with statute  
2 and its companion administrative code sections under the Supreme Court case authority cited  
3 above.

4 Further supporting this is that the statute in question is ambiguous since it required the  
5 Defendant to submit its application on the form prescribed and yet the form prescribed did not  
6 include the information Plaintiff now alleges was required under N.R.S. 453 A.322 (3)(a)(5).  
7 Further, Defendant did the best anyone could do to comply with N.R.S. 453 A.322 (3)(a)(5) by  
8 submitting the letter from the licensed surveyor. The State itself did not enforce or require the  
9 information contained in N.R.S. 453 A.322 (3)(a)(5). No one has or could comply with the  
10 requirements in that subsection since no one could have had the information at the time the  
11 application was filed (there was an application deadline and although the State could request  
12 additional information there was no provision or allowance for anyone to supplement or amend  
13 their application -- otherwise why would there be a deadline). Also like in the cases cited above  
14 the Defendant would suffer incredibly if the decision were not reversed. Thus, equity and the law  
15 cited above clearly favor the Court following the substantial compliance rule. Especially, since  
16 Defendant's facility in fact met the zoning restriction requirements of N.R.S. 453 A.322 (3)(a)(5).

17 **II. THE COURT SHOULD ALSO REVERSE ITS DECISION DUE TO THE**  
18 **AMBIGUITIES OF THE STATUTE IN ORDER TO AVOID AN ABSURD**  
**RESULT AND TO PREVENT MANIFEST INJUSTICE.**

19 The Nevada Supreme Court has stated that Courts have a duty to construe statutes as a  
20 whole so that all provisions are considered together and, to the extent practicable reconciled and  
21 harmonized. In interpreting statutes, the Supreme Court considers the policy and spirit of the law  
22 and will seek to avoid an interpretation that leads to an absurd result. *Smith v. Kisorin USA, Inc.*  
23 *127 Nev. Adv. Op. 37, 254 P.3d 636, (2011)*. Similarly the Nevada Supreme Court has stated,  
24 "whenever the interpretation of a statute or constitution in a certain way will result in manifest  
25 injustice, or public inconvenience, Courts will always scrutinize the statute or constitution closely  
26 to see if it will not admit some other interpretation." *State ex. Rel. McMillian v. Sadler* *25 Nev.*  
27 *131, 58 P.2d 84 (1899)*. The Supreme Court has further stated that it is not for the Court to step  
28 into the shoes of the state and make decisions for them. *North Lake Tahoe Fire Protection*

1 *District v. Washoe County Board of County Commissioners* 129 Nev. Adv. Op. 72, 310 P.3d 583,  
2 585-587 2013.<sup>2</sup>

3 Here, there is nothing in the statute in question that states that the State could not issue a  
4 registration certificate if the application did not include proof of licensure from the City of Las  
5 Vegas. The statute in question merely states that if an application included certain things the  
6 division "shall issue the registration certificate and give the applicant a random 20 digit alpha  
7 numeric identification number." The only requirements regarding the application were that the  
8 applicant submit the application on the form prescribed by the division under N.R.S. 453 A.322.  
9 That application mirrored N.A.C. 453 A.306 which code section does specifically state what was  
10 required in the State medical marijuana application. Defendants not only submitted the  
11 application on the form prescribed by the division but also included all of the information  
12 required under N.A.C. 453 A.306.

13 Of course, pursuant to N.R.S. 453.A326 the State could not issue the final medical  
14 marijuana approval until the proof of conformance with local zoning requirements and the  
15 business license was obtained by the applicant.

16 Thus, the State interpreted the statute as requiring the application to include the things  
17 contained in N.A.C. 453.A306 in order for the applicant to receive a provisional certificate and  
18 then the proof of zoning and business license from the City of Las Vegas before issuing the final  
19 approval under N.R.S. 453 A.326. See State's brief attached to motion for reconsideration. There  
20 is nothing wrong with this interpretation. No place in N.R.S. 453 A.322 does it state that the State  
21 cannot issue a registration certificate if the applicant does not provide proof of licensure.

22 At best, the statute is ambiguous since it states that the applicant must submit its  
23 application on the State prescribed form and that form does not include the information contained  
24 in N.R.S. 453 A.322(3)(a)(5). Indeed, the application states no other information can be provided  
25 or at least that it will not be considered. Similarly, as outlined above the alleged information  
26 required could not have been submitted since it was not available.

27 Accordingly, based on the above case law the Court should find that in interpreting the  
28

<sup>2</sup> None of these cases were cited in the opposition by prior counsel.  
PSHEEHAN/11595198.1



1 statute it is unclear or ambiguous as to when proof of City of Las Vegas licensure was required.  
2 Therefore, when taking into account the equities, to avoid a manifest injustice or an absurd result  
3 Defendant believes the Court should find that the way the State interpreted the statute is ok.

4 This is especially true since no one could have complied with the statute.

5 Plaintiff asserts that because the City sent a letter on October 30<sup>th</sup> to the State advising the  
6 State of who received SUP approval it somehow complied with N.R.S. 453 A.322(3)(a)(5). That  
7 is not true. As shown from Exh. 2 the deadline for submission of applications was 8/18/2014.  
8 Neither the statute nor the State's rules allowed for any supplements or amendments to the  
9 application. The only exception was if the division received any findings from a report  
10 concerning the criminal history of an applicant or a person who is proposed to be an owner,  
11 officer or board member of a proposed medical marijuana establishment that disqualify that  
12 person from being qualified to serve in that capacity. In that case the division would provide  
13 notice to the applicant and give the applicant an opportunity to revise its application i.e. to  
14 remove that person. That is the only exception allowing an applicant an opportunity to revise its  
15 application. Indeed, since the rules specifically reference the one rule regarding when an  
16 application may be revised no other revisions can be allowed under the old maxim expressio  
17 unius est exclusio alterius (the expression of one thing in a portion of a statute, rule or contract  
18 excludes the same in others). There would be no point for a deadline if everyone could add to or  
19 amend their application after the deadline. Thus, if in fact the Court were to construe the statute as  
20 requiring proof of licensure it would lead to an absurd result i.e. all applications being revoked  
21 since no one submitted proof of licensure at the time of their application.

22 Instead, the Court should find that since the statute is ambiguous (it states that the  
23 application must be on the form prescribed by the State which form did not include the  
24 information and does not specifically state that the information is required but merely states that  
25 the division shall issue a registration certificate if certain information is submitted), was  
26 impossible to comply and would lead to an absurd result and a manifest injustice if strictly  
27 interpreted the way Plaintiff asserts the Court finds that allowing proof of licensure by an  
28 applicant prior to the issuance of final approval is o.k. under the statutes. This provides a second

1 independent reason why the Court should reverse its Order.

2 **III. THE LAW REQUIRED THE STATE DIVISION TO NOTIFY**  
3 **DEFENDANT IF ITS APPLICATION WAS REJECTED. NOT ONLY DID**  
4 **THE STATE NOT REJECT THE APPLICATION BUT IT ACTUALLY**  
5 **ISSUED BOTH THE PROVISIONAL AND FINAL CERTIFICATE**  
6 **CAUSING DEFENDANT TO SPEND MILLIONS OF DOLLARS.**  
7 **ACCORDINGLY EQUITABLE ESTOPPEL IS CLEARLY APPLICABLE.**

8 Although Defendant's original opposition had a small section and cited one case regarding  
9 equitable estoppel it did not cite the leading cases or provide the detailed explanation set forth in  
10 the motion for reconsideration. In its motion for reconsideration Defendant cited *Nevada Pub.*  
11 *Employees Retirement Board v. Byrne* 96 Nev. 276, 607 P.2d 1351 (1950) where the Court held  
12 that equitable estoppel prevented a government entity from denying benefits as a result of a  
13 technical violation of a statute stating:

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

17 Id at 280. It also attached an affidavit showing the specific harm to Defendant which would occur  
18 if the Court's order were allowed to stand including three women spending three years of their  
19 life without any pay and losing their life savings. In addition the motion for reconsideration cited  
20 a case on all fours *Southern Nevada Memorial Hospital v. The Department of Human Recourses*  
21 *101 Nev. 387, 705 P.2d 139 (1985)* which again was not included in the prior counsel's  
22 opposition. In that case a license was issued originally but upon appeal from another applicant the  
23 department changed the decision and tried to revoke Southern Nevada's license. Although the  
24 applicant obviously understood its license could get overturned on the appeal, the Nevada  
25 Supreme Court still found equitable estoppel against the government was necessary to avoid  
26 manifest injustice and hardship. The Court stated that rooted in concepts of justice and right is the  
27 idea that the sovereign is responsible and a citizen has a legitimate expectation that the  
28 government should deal fairly with him or her. Id at 141.

Plaintiff's opposition states that equitable estoppel should not be applied because  
Defendant was on notice that its application was deficient. This could not have been further from  
the truth.



1 Under N.A.C. 453A.322 if Defendant's application was rejected by the State the State had  
2 an affirmative obligation to advise Defendant of this fact. N.A.C. 453A.322 states as follows, if  
3 the division denies an application for...a medical marijuana registration certificate..., the division  
4 must provide notice to the applicant or medical marijuana establishment that includes, without  
5 limitation, the specific reasons for the denial....

6 The State never informed Defendant that its application was rejected. To the contrary the  
7 State informed the Defendant that its application had been approved both provisionally and then  
8 finally. Moreover, to say that the Defendant knew that its application was deficient is ridiculous  
9 since the statute in question states that the application had to be on the State's prescribed form  
10 and the Defendant filled out its application based on that form. How would anyone know that  
11 their application was deficient for not including the information when it was not on the State  
12 prescribed form. Further, the application stated no other information would be considered other  
13 than what was on the form. At best, it was ambiguous whether the information was required.  
14 Also, the information could not have been included in the application since it was not available.  
15 In addition Plaintiff dropped its lawsuit against the Defendant.

16 In summary there cannot be a case where equitable estoppel is more appropriate. The  
17 State prescribed the form on which the application was to be made. The statute stated that the  
18 application had to be on that form. The Defendant complied with that direction. The State never  
19 rejected the application as required by law if it were to be rejected. This all occurred in 2014.

20 Between 2014 and 2016 the applicant spent all of its time, energy and money building a  
21 facility, opening the facility, spent significant monies on marketing and advertising, has built up a  
22 significant client base and now for the State to revoke that license would be patently unfair.  
23 Equitable estoppel and the above citations from the Nevada Supreme Court clearly prevent this  
24 action.

25 **IV. AS SUPPORTED BY THE STATE'S BRIEF PLAINTIFF IS ESTOPPED**  
26 **FROM BRINGING ITS CLAIMS BY ITS ACTIONS OF WAITING A**  
**YEAR TO BRING THE PRESENT SUIT.**

27 As pointed out in the State's response to the motion for reconsideration GB Sciences own  
28 actions warrant a reversal to the decision on estoppel grounds. The State's brief states as follows:

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

16 See State's response brief at page 2 lines 10-21.

17 The opposition states that Defendant should not prevail in its estoppel argument against  
18 Plaintiff since Plaintiff's expenditures of money during the 7 month timeframe between when  
19 Plaintiff dismissed its first suit against Defendant and then re brought its action was done at  
20 Defendant's own risk since the dismissal was without prejudice. This is disingenuous. Certainly  
21 the Defendant or anyone else in that position would have moved forward after being dismissed  
22 from the lawsuit by GB Sciences and the State not taking any action against the Defendant. It was  
23 during that 7 months that Defendant incurred the bulk of its costs. It was during that time frame it  
24 spent significant sums building the facility, committed to buying out partners and incurred huge  
25 legal fees in getting the final approvals from the City of Las Vegas and the State. Thus, that 7  
26 month period was crucial and it was Plaintiff GB Sciences that took the risk when it dismissed  
27 Defendant because it knew that Defendant would rely upon that dismissal to incur those expenses.  
28 Accordingly this provides another reason why the decision should be reversed.

29 V. THE NEVADA SUPREME COURT LACHES CASE IS ALSO ON ALL  
30 FOURS JUSTIFYING A REVERSAL.

31 The one argument which was completely raised in the original opposition was  
32 Defendant's laches argument. However, Defendant believes that the case of *Carson City vs. Price*  
33 is so on point that it would be a clear mistake of law if the Court did not reverse its decision on  
34 laches grounds. The State accepted Defendant's application and did not provide notice that the  
35 application was deficient as the Nevada Administrative Code required if in fact Defendant's

1 application was deficient. The State then provided Defendant with a provisional certificate. When  
2 the State did this they clearly knew that the Defendant would move forward and expend  
3 significant sums based on that issuance. The Defendant did in fact go forward spending  
4 approximately \$2 million, several years of work, built the facility, opened the facility, marketed  
5 the facility and developed a substantial client base.

6 For the State to be able to now come in 2 years later and state that whoops we made a  
7 mistake and we should not have given you the license would be exceptionally inequitable. As a  
8 result the Court should follow the rule in *Carson City v. Price* 113 Nev. 409, 934, P.3d 1042  
9 (1997) where the Court stated:

10 "Laches is an equitable doctrine which may be invoked when delay by one party  
11 works to the disadvantage of the other, causing a change of circumstances which  
12 would make the grant of relief to the delaying party inequitable." *Building &*  
13 *Constr. Trades v. Public Works*, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37  
14 (1992). "Thus, laches is more than a mere delay in seeking to enforce one's rights;  
it is a delay that works to the disadvantage of another." *Home Savings v. Bigelow*,  
105 Nev. 494, 496, 779 P.2d 85, 86 (1989). "The condition of the party asserting  
laches must become so changed that the party cannot be restored to its former  
states." *Id.*, at 412, 413.

15 Similarly, Plaintiffs waiting a year to file its lawsuit, during which time Defendant took  
16 the above actions, warrants a laches finding.

17 **VI. PLAINTIFF/COUNTERDEFENDANT LACKS STANDING TO BRING**  
**THE ACTION.**

18 Another argument not raised in Defendant's prior counsel's opposition is that Plaintiff  
19 lacks standing to bring the action. The Court did touch on the issue at the hearing of whether its  
20 decision would result in the revocation of all the City applicants licenses at the hearing. Somehow  
21 the Plaintiff convinced the Court that because the City of Las Vegas had sent a letter on the  
22 evening of October 30<sup>th</sup> (well after the State had determined who were to get the provisional  
23 certificates) it and the other people on that list qualified for a license and Defendant did not. This  
24 is simply not true.

25 If there was a requirement that an applicant provide either a license or proof from the City  
26 of Las Vegas that the applicant met all of the City of Las Vegas' medical marijuana zoning  
27 restrictions (Defendant alleges there was not) it was due at the time of the application. There is no  
28 place in N.R.S. 453.A322 which allows an entity to supplement its application. To the contrary

1 there was a deadline of when the application had to be submitted. The only allowance for  
2 supplementation would be if one of the members of the entity was disqualified due to a criminal  
3 background check. There were no other exceptions. Why have a deadline if one could  
4 supplement.

5 Plaintiff's own opposition illustrates the point. It states that Defendant could not cure its  
6 breach of not filing the proof of licensure or a letter from the City showing it met all the zoning  
7 restrictions by showing that it received City licensure later. The opposition states as follows:

8 Desert Aire argues that it later obtained a special use permit, and, thus, cured its  
9 default of the provisions of N.R.S. § 453 A.322(3)(a)(5). See Motion for  
10 Reconsideration at 3:5-8. However, the statute does not allow a cure period after  
11 the fact. Rather, the plain language of N.R.S. § 453A.322(3)(a)(5) requires that  
12 Zoning Approval be obtained before the issuance of registration certificates,  
13 provisional or final, which is to occur by the end of the 90-day application period.

14 This mischaracterization of what the statute says highlights the fact that Plaintiff's  
15 allegation would result in all licensees license being revoked and leaving Plaintiff without  
16 standing to pursue this action. There is no plain language in N.R.S. 453 A.322(3)(a)(5) that  
17 requires zoning approval to be obtained during the 90 day application period. The statute states  
18 that the person must submit the application and a companion code section states that the  
19 application must be filed by a deadline. There is nothing in the statute or any of the code sections  
20 which states that the zoning approval letter could be submitted at a later time. To the contrary the  
21 statute's language makes it clear that if the letter was required it had to be submitted with the  
22 application by the deadline. Otherwise why have a deadline. That deadline was August 18<sup>th</sup> and  
23 no one submitted that information with their application including the Plaintiff. Further, no one  
24 ever supplemented their application with license approval.

25 It is true the State sent a letter to the State on October 30<sup>th</sup> (October 31<sup>st</sup> was a holiday and  
26 the next two days were a weekend thus the State's provisional certificates had clearly been  
27 determined well before this timeframe). However, that is not the equivalent of the applicant  
28 submitting proof with its application. Indeed, neither GB Sciences or anyone else ever submitted  
any proof with their application but instead the City submitted a letter to the State. Thus, no one  
complied with the statute if it was required.

1 As a result Plaintiff/Counterclaimant lacks standing to bring this action.

2 **VII. EACH OF THE FACTORS WEIGHS HEAVILY IN GRANTING THE**  
3 **STAY PENDING APPEAL AND THE STATE SUPPORTS GRANTING**  
4 **THE STAY.**

5 Each of the four factors the Court should consider when deciding whether to grant a stay  
6 pending appeal heavily favors granting a stay. The factors are:

- 7 (1) Whether the object of the appeal or writ petition will be defeated if the  
8 stay is denied;
- 9 (2) Whether appellate will suffer irreparable or serious injury if the stay is  
10 denied;
- 11 (3) Whether respondent in interest will suffer irreparable or serious injury if  
12 the stay is granted;
- 13 (4) Whether the appellate is likely to prevail on the merits in the appeal.

14 The opposition states that the object of the appeal would not be defeated because if  
15 Defendant won the Court could just reissue the registration certificate. This completely misses the  
16 point. If the stay is not granted and Defendant will be forced to close and it will lose its business  
17 forever in all likelihood. First, it will lose the lease. Second, it would lose all of its customers.  
18 Third, even if could continue its competitors would have gotten such a jump that for all  
19 practicable purposes Desert Aire would be done. Thus, the first and most important factor clearly  
20 weighs heavily in favor of granting the stay.

21 Next, as set forth above Defendant would suffer irreparable injury. It would lose its  
22 business.

23 The third factor also weighs in favor of granting the stay since Desert Aire would not  
24 suffer any serious injury since it is not getting a license pending the appeal either.

25 The last factor, likelihood of success on the merits (which does not always have to be  
26 shown if the first three factors weigh heavily in favor of granting the stay which is the case here)  
27 also favors granting the stay. This is because the question set forth herein presents a substantial  
28 case on the merits where a serious legal question is involved and the balance of equities weighs  
heavily in favor of granting the stay. *Hanson v. Eighth Judicial District Court* 116, Nev. 650, 6  
*P.3d* 982 (2000). The Court's decision could have wide ranging effects. Also this is clearly a

1 close legal question as shown by the Court's questions during the hearing. Obviously the equities  
2 weigh heavily in favor of granting the stay since the Defendants and its three members would lose  
3 their life savings, spend three years of their life working for nothing only to lose their business as  
4 a result of the decision and then have no remedy if they win on appeal since their business would  
5 be in effect out of business.

6 The State further supports the stay pending appeal since it obviously needs a final decision  
7 on this matter. Further, it does not want to have to go through the process of trying to find a new  
8 licensee only to have the Supreme Court grant the Defendant its license back.

9 It should also be noted that public policy waives in favor of allowing the business to  
10 remain open. Attached as exhibit 3 is a letter from the State following the latest inspection of the  
11 facility giving it full passing marks. There are many customers of the business which need their  
12 medical marijuana for medicinal purposes who rely on and like Defendant's facility. Allowing  
13 this store to stay open when it is a clear benefit to society would be appropriate and good policy.

#### 14 VIII. CONCLUSION.

15 Defendant asks that the Court issue an order reversing its decision and granting Defendant  
16 Summary Judgment on one or more of the following grounds:

- 17 1. Defendant having completed an application on the State's required form  
18 as the statute in question required substantially complied with the statute in  
19 question. This is especially true since the one piece of information which  
20 was not provided (out of approximately 20 pieces of information) was  
21 unclear, impossible to comply with and whose purpose of which was in  
22 actuality met by the Defendant's facility which met the requirements of  
the statute. Thus, in balancing the equities as required pursuant to the  
Nevada Supreme Court cases on substantial compliance (Defendant has  
shown it would suffer significant injustice if the substantial compliance  
doctrine were not applied) the Court finds substantial compliance is  
appropriate.
- 23 2. The statute at best is ambiguous since it requires the applicant to submit  
24 its application on the State required form, specifically states that it will not  
25 consider any other additional information, and yet the form did not  
26 include the information allegedly required under N.R.S. 453.322 (3)(a)(5).  
27 As a result, to avoid manifest injustice (the Defendant spending years  
28 working on this, spending their life savings, building a facility, opening  
the facility, spending significant sums on marketing and getting a client  
base only to have it revoked if the Court did not reverse the Order) finds  
that proof of licensure was not necessarily required at the time the license  
was submitted and Defendants obtaining that licensure later suffices.



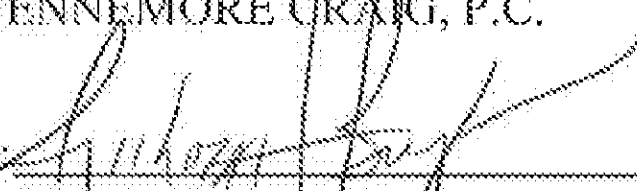
- 1                   3.       The Court finds in favor of the Defendant based on a number of Supreme  
2                   Court cases finding that a Court should construe statutes in a way as to  
3                   avoid an absurd result. It would be an absurd result to revoke Defendant's  
4                   license two years after it had been granted because it failed to include in  
5                   an application a license from the City of Las Vegas when no such licenses  
6                   had been issued. It is clear to the Court that the statutory scheme which  
7                   was new was not well thought out and it would be unfair to punish the  
8                   Defendant for the problems with the statute which did not consider the  
9                   fact that the State's application deadline would be before local  
10                  governments issued licenses.
- 11                  4.       The Court grants Judgment in favor of the Defendant on equitable  
12                  estoppel grounds for two reasons. First, it would be grossly unfair to  
13                  revoke a party's license under the facts set forth in this case including the  
14                  substantial reliance by the Defendant and blatant errors of the State. A  
15                  wealth of Supreme Court case authority shows that the Court should use  
16                  its equitable powers to prevent a manifest injustice from occurring and  
17                  this is such a case. The State requiring the applicant to submit the  
18                  information (and only the information) on the State application form  
19                  which did not include the information Plaintiff alleges should have been  
20                  required, was the State's fault if it was required and not the Defendants.  
21                  Further, the Nevada Administrative Code required the State to notify the  
22                  Defendant if its application was deficient. Not only did the State not notify  
23                  the Defendant that its application was deficient but it actually awarded the  
24                  Defendant both the provisional and final license. The Defendant relied  
25                  upon this to spend years of their lives working for free, spending their life  
26                  savings, building out their facility and opening for business. Accordingly,  
27                  pursuant to the doctrine of equitable estoppel the Court rules that the  
28                  Defendant's license cannot be pulled at this time. Similarly Plaintiffs  
actions in dismissing the Defendant from a lawsuit and then re bringing a  
suit seven months later during which time Defendant relied upon the  
dismissal to spend significant sums of money warrants equitable estoppel.
5.       Pursuant to the Nevada Supreme Court case of *Carson City vs. Price* and  
the factors in this case the Court reconsiders its Order and reverses  
pursuant to the doctrine of laches.
6.       It is clear that the Plaintiff has no standing to bring this action since it did  
not submit the allegedly required information with its application either.  
Neither the statute nor the State's rules allowed for supplementation of  
Plaintiff's application and indeed Plaintiff never actually supplemented its  
application anyway. Therefore, the State sending a letter (well after the  
fact and after the State made its decision on who to give the provisional  
licenses to) did not equate to complying with the statute if the information  
were required as alleged by Plaintiff.

24                  If the Court decides any of these have merit a reversal is warranted. On the other hand if  
25                  the Court decides that none of these reasons warrant reversal certainly a stay pending appeal is  
26                  warranted.

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Dated this 10 day of May, 2016.

FENNEMORE CRAIG, P.C.

By:   
Richard H. Bryan (Bar No. 2029)  
Patrick J. Sheehan (Bar No. 3812)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
*Attorney for Desert Aire Wellness, LLC*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig Jones Vargas and that on May 10, 2016, service of the **REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT, COUNTERMOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE A STAY PENDING AN APPEAL** was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

**E-Service Master List  
For Case**

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

**Attorney General's Office**

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**Cooper Levenson, P.A.**

Contact	Email
Kimberly Maxson-Rushton	krushton@cooperlevenson.com

**Michael H. Singer, Ltd.**

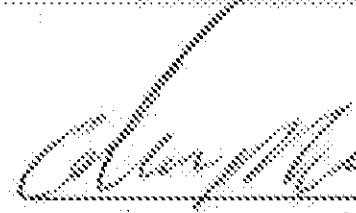
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**Smith & Shapiro**

Contact	Email
Jill Berghammer	jberghammer@smithshapiro.com

**Smith & Shapiro, PLLC**

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Sheldon Herbert	sherbert@smithshapiro.com

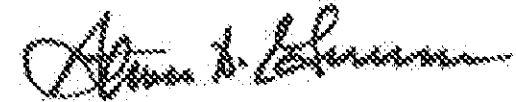
  
An Employee of Fennemore Craig, P.C.

# EXHIBIT

# 1

1 **OPPM**  
2 MICHAEL H. SINGER, ESQ.  
3 Nevada Bar No. 1589  
4 MICHAEL H. SINGER, LTD.  
5 4475 South Pecos Road  
6 Las Vegas, Nevada 89121  
7 Telephone: (702) 454-2111  
8 Facsimile: (702) 454-3333  
9 Email: msinger@mhsingerlaw.com  
10 Attorney for Defendant/Counterclaimant

Electronically Filed  
02/08/2016 02:02:02 PM



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

Defendant.

AND ALL RELATED CLAIMS

Case No.: A-15-728448-C

Dept. No.: I

Date of Hearing: February 23, 2016

Time of Hearing: 9:00 a.m.

**DESERT AIRE WELLNESS LLC'S  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AGAINST  
DESERT AIRE WELLNESS LLC  
and  
COUNTERMOTION FOR SUMMARY  
JUDGMENT AGAINST GB SCIENCES  
NEVADA LLC**

20 COMES NOW Defendant, Desert Aire Wellness LLC, by and through its attorney, MICHAEL  
21 H. SINGER, ESQ., of the law firm of MICHAEL H. SINGER, LTD., and hereby submits its Opposition  
22 to Plaintiff/Counterdefendant's Motion For Summary Judgment Against Desert Aire Wellness LLC, and  
23 for Defendant's Countermotion for Summary Judgment dismissing Plaintiff's Complaint for Injunctive  
24 Relief against Defendant.

25 ///

26 ///

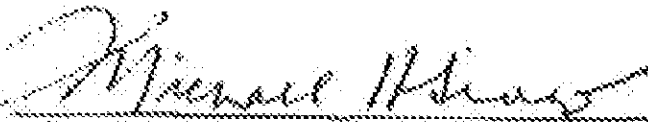
27 ///

28 ///

1 This Opposition is made and based on the pleadings and papers on file, the following  
2 Memorandum of Points and Authorities, the Affidavit of Brenda Gunsallus, and any oral argument the  
3 Court may choose to hear.

4 DATED this 8 day of February, 2016.

5 MICHAEL H. SINGER, LTD.

6  
7 BY: 

8 MICHAEL H. SINGER, ESQ.

9 Nevada Bar No. 1589

4475 S. Pecos Road

Las Vegas, NV 89121

10 Attorney for Defendant/Counterclaimant

11  
12 POINTS AND AUTHORITIES

13 I.

14 STATEMENT OF FACTS

15 Both Plaintiff, GB Sciences Nevada LLC ("Plaintiff") and Defendant/Counter-Movant, Desert  
16 Aire Wellness LLC ("Defendant") were applicants for a Medical Marijuana Dispensary License  
17 ("MME").

18 On November 3, 2014, Defendant was granted a provisional certificate by the State of Nevada's  
19 Department of Health and Human Services Division of Public and Behavioral Health for Plaintiff's  
20 location at 420 E. Sahara Ave., Las Vegas, NV 89104. See Exhibit "A" attached hereto and by  
21 reference incorporated herein.

22 At the Las Vegas City Council meeting of October 29, 2014, Defendant's application for a  
23 Special Use Permit for 420 E. Sahara Ave. was withdrawn "without prejudice," even though staff had  
24 recommended "Approval, subject to conditions". See Exhibit "B" attached hereto and by reference  
25 incorporated herein.

26 Thereafter, on December 17, 2014, the City Council approved the Special Use Permit for  
27 Defendant at 420 E. Sahara Ave., five (5) members "For," one (1) member "Against" with Mayor Carol

28 ///

1 Goodman abstaining because her son has an interest in an MME. See Exhibit "C" attached hereto and  
2 by reference incorporated herein<sup>1</sup>.

3 On or about December 2, 2014, Plaintiff instituted a lawsuit (Case No. A-14-710597-C) against  
4 several parties, including Defendant, challenging the issuance by the State of the provisional certificate  
5 to the various named defendants, including Defendant, Acres Medical LLC, NuLeaf CLV Dispensary  
6 LLC, and the State of Nevada for issuing the provisional certificates. See Exhibit "D" attached hereto  
7 and by reference incorporated herein.

8 After receiving the Special Use Permit, on January 1, 2015, Defendant began making the Ten  
9 Thousand Dollar (\$10,000) per month lease payment to the owner of 420 E. Sahara Ave. premises, and  
10 started the construction of the premises to meet the State and City MME standards. See Exhibit "E,"  
11 Affidavit of Brenda Gunsallus attached hereto and by reference incorporated herein.

12 It also engaged the Gordon Silver law firm to represent it in Case No. A-14-710597-C, and  
13 pursuant thereto, Gordon Silver appeared on Defendant's behalf. Plaintiff filed several motions for  
14 Preliminary and Permanent Injunction, which were opposed by Defendant, and the other Defendants.  
15 See Exhibit "F" attached hereto and by reference incorporated herein.

16 The Motions were argued on December 31, 2014 before Judge Johnson, but before any ruling  
17 was issued, Defendant was voluntarily dismissed without prejudice by Plaintiff pursuant to NRCP  
18 41(a)(1)(i). See Exhibit "G" attached hereto and by reference incorporated herein.

19 No longer involved in litigation involving the propriety or legality of its provisional certificate,  
20 Defendant began in earnest to build out its facility at 420 E. Sahara Ave. See Exhibit "E," Affidavit of  
21 Brenda Gunsallus. Eventually, the construction of the facility was tentatively completed in November  
22 2015, was inspected by the State officials on November 23, 2015, and conditionally approved with  
23 changes required. See Exhibit "E," Affidavit of Brenda Gunsallus. These changes were made, the City  
24 Building Department inspected the facility, and Defendant was issued a Certificate of Occupancy on  
25 December 15, 2015. See Exhibit "H" attached hereto and by reference incorporated herein.

26 ///

27  
28 <sup>1</sup> The approval letter was actually transmitted to Cecile Properties, LLC, the owner of 420 E. Sahara Ave. and Defendant's  
landlord. See Exhibit "C-1" attached hereto and by reference incorporated herein.

1 Finally, on January 6, 2016, the City Council approved Defendant for a City Business License.  
2 See Exhibit "I" attached hereto and by reference incorporated herein. The total direct cost to construct  
3 Defendant's MME facility, together with license fees paid to the State and City of Las Vegas to permit  
4 operation is in excess of Nine Hundred Fifty Thousand Dollars (\$950,000). Exhibit "E," Affidavit of  
5 Brenda Gunsallus.

6 In the meantime, on December 2, 2015, Plaintiff instituted the current proceeding by the filing of  
7 its Complaint against Defendant, the State of Nevada, and the City of Las Vegas, contending the  
8 provisional (and now permanent) certificate issued by the State on December 31, 2015 (See Exhibit "J"  
9 attached hereto and incorporated herein by reference) was improperly issued because Defendant "never  
10 obtained the required Special Use Permit or Business License from the City of Las Vegas prior to  
11 November 3, 2014." See Complaint paragraph 42.

12 Plaintiff has conveniently failed to note that Defendant did receive its Special Use Permit on  
13 December 17, 2014 (SUP-55207), and, also, that it previously sued Defendant on the same grounds as  
14 herein stated, but voluntarily dismissed the Complaint against Defendant in April 2015.

15 Based upon the foregoing facts, and Argument to follow, Defendant contends that Plaintiff's  
16 Motion For Preliminary (or Permanent) Injunction must be denied and Defendant's Countermotion for  
17 Summary Judgment dismissing Plaintiff's Complaint against Defendant must be granted, there being no  
18 material issues of fact.

## 19 II.

### 20 ARGUMENT

#### 21 A. Defendant Has Been Properly Licensed

22 Plaintiff has properly noted that the State licensing ("certificate") process for granting and MME  
23 is provided in NRS 453A.322, and that subsection (3)(a)(5) requires that the location to be issued a  
24 provisional MME certificate must be in approved zoning and the issuance of the MME requires that the  
25 establishment itself satisfies all state and local MME building and business license requirements.

26 Nowhere is it required that the Special Use Permit be issued prior to the issuance of the state  
27 provisional certificate. In fact, in accordance with Las Vegas Ordinance No. 6321 (Bill No. 2014-30), it  
28 specifically states under "Medical Marijuana Dispensary" section 10, paragraph 5 that "A medical

1 marijuana dispensary shall obtain all required approvals from the State of Nevada to operate such a  
2 facility prior to the Special Use Permit being issued pursuant to LVMC 19.16.110." Emphasis added.

3 By reason of the above, Defendant submits it, the State of Nevada, and the City of Las Vegas  
4 have all complied with the relevant MME statutory framework and Defendant is validly licensed as an  
5 MME dispensary.

6 **B. Plaintiff's Claim Is Barred By Laches**

7 In the case of *Carson City v Price*, 113 Nev. 409, 934 P.2d 1042 (1997), a suit involving facts  
8 strikingly similar to the case at bar, it was held the granting of a preliminary injunction restraining the  
9 continuing development and dismantling of a real estate project was barred by laches.

10 In *Carson City v Price*, the Carson City Board of Governors approved a project built and paid for  
11 by an entity, Citizens For Affordable Homes, Inc. ("CAHI"). CAHI had satisfied all the conditions of  
12 the Agreement with Carson City and the City then transferred to CAHI a deed conveying title to a  
13 detention pond property which CAHI had reengineered and reconstructed a storm drainage system,  
14 thereby enabling CAHI to develop the previous pond property for homes.

15 The Prices (Respondents) owned property abutting the detention pond and did not attend the  
16 public meeting when the city board approved the project, although they became aware of the City action.  
17 Nonetheless, some eight (8) months after the pond project was completed, Respondents brought suit for  
18 injunctive relief to prevent CAHI from further developing the pond (with two incomplete homes under  
19 construction) and for monetary damages.

20 The trial court gave Respondents a Temporary Restraining Order, followed by a preliminary  
21 injunction. The City and CAHI appealed, arguing that the Respondent's suit was barred by laches, and  
22 the Supreme Court agreed, thereby dissolving the injunction. In so doing, the Supreme Court, citing  
23 prior authority stated, 113 Nev. 409, at 412:

24 "Laches is an equitable doctrine which may be invoked when delay by one  
25 party works to the disadvantage of the other, causing a change of  
26 circumstances which would make the grant of relief to the delaying party  
27 inequitable." *Building & Constr. Trades v. Public Works*, 108 Nev. 605,  
28 610-11, 836 P.2d 633, 636-37 (1992). "Thus, laches is more than a mere  
delay in seeking to enforce one's rights; it is a delay that works to the  
disadvantage of another." *Home Savings v. Bigelow*, 105 Nev. 494, 496,  
779 P.2d 85, 86 (1989). "The condition of the party asserting laches must



1           become so changed that the party cannot be restored to its former state.”  
2           Id., at 412, 413.

3           The Court then noted that waiting eight (8) months from the time of the public hearing, and after  
4 CAHI's spending “thousands of dollars preparing the lots, gaining governmental approvals, and actually  
5 completing a large portion of the construction... [r]espondents' delay caused a material disadvantage to  
6 CAHI so altering CAHI's position that it cannot be restored to its pre-project condition.” Id., at 413.

7           Sound familiar? Here, this Plaintiff voluntarily dismissed Defendant from the prior action  
8 involving the same legal issues. Now, some nine (9) months after the voluntary dismissal of Defendant  
9 in the prior action and after Defendant expended hundreds of thousands of dollars in constructing its  
10 MME facility and securing all governmental approvals, Plaintiff seeks an affirmative injunction  
11 preventing Defendant from operating its approved MME dispensary.

12           Plaintiff cites *Leonard v Stoebling*, 102 Nev. 543, 728 P.2d 1358(1986) and *Memory Gardens of*  
13 *Las Vegas v Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 492 P.2d 123 (1972) in support of its  
14 argument that an affirmative injunction, undoing prior unlawful acts, has case support. Not only are  
15 these cases distinguishable in that the wrongdoer violated the other parties' real property rights, in  
16 neither instance did the party seeking an injunction wait an inordinate amount of time before instituting  
17 legal process.

18           In short, the facts of this case mandate the Plaintiff's own actions prohibit, in equity, the relief  
19 sought – a mandatory affirmative injunction – against Defendant, and, to the contrary, mandates that  
20 Defendant's Countermotion for Summary Judgment dismissing Plaintiff's Complaint against it be  
21 granted.

### 22   C.   Plaintiff's Claims Are Barred By Equitable Estoppel

23           In *Brelant v Preferred Equities Corp.*, 112, Nev. 663, 918 P.2d 314 (1996), our Supreme Court  
24 citing numerous prior cases, set forth the principles of equitable estoppel.

25           The purpose of equitable estoppel is to “prevent a party from asserting legal rights that, in equity  
26 and good conscience, they should not be allowed to assert because of their conduct.” 112 Nev. 663, at  
27 673. The Court then set forth the four (4) elements necessary for equitable estoppel, to wit:

- 28           1. The party to be estopped has actual or constructive knowledge of the true facts;



2. Such party must so intend that either his conduct be relied upon or the other party could reasonably believe he could act upon such conduct;
3. The party asserting estoppel must be ignorant of the true facts; and
4. Such party relied upon the other's conduct to his detriment. Id., 673-674.

Applying the foregoing to the facts at bar mandate a conclusion that Plaintiff is equitably estopped from securing a mandatory affirmative injunction, as follows:

1. Firstly, Plaintiff certainly knew all the facts when it filed the prior, voluntarily dismissed complaint, which is virtually identical to the Complaint at bar;
2. Certainly, by dismissing the prior complaint, Defendant had the right to believe there was no current dispute between Plaintiff and Defendant;
3. Equally, Defendant was ignorant of the fact Plaintiff was again going to sue it on the same basis as the prior complaint; and
4. Lastly, Defendant has expended in excess of Nine Hundred Fifty Thousand Dollars (\$950,000) to be in a position to begin operations as a MME Dispensary<sup>2</sup>.

It is likewise axiomatic that in determining whether or not an injunction should issue, the relative equities are to be considered. Citations deliberately omitted.

Given that Defendant has expended an enormous amount of money and effort to get to the point of final issuance of the City business license, and Plaintiff not having done anything equivalent, the balance of the equities favor Defendant by a large margin.

When this factor is added to Plaintiff's laches, and the issue of equitable estoppel, Plaintiff's Motion For Summary Judgment must be denied, and Defendant's Countermotion For Summary Judgment dismissing Plaintiff's Complaint For Injunctive Relief should be granted.

### III.

#### CONCLUSION

1. Plaintiff's Motion For Summary Judgment to disgorge Defendant of its MME Dispensary certificate must be denied; and


---

<sup>2</sup> Defendant only leases 420 E. Sahara Ave. at a rental of \$10,000 per month. If it is precluded from being a licensed MME dispensary, the cost of all of the improvements, etc. will not be recoverable.

1 2. Defendant's Countermotion For Summary Judgment dismissing Plaintiff's Complaint for  
2 Injunctive Relief should be granted.

3 DATED this 8 day of February, 2016.

4 MICHAEL H. SINGER, LTD.

5  
6 BY:   
7 MICHAEL H. SINGER, ESQ.  
8 Nevada Bar No. 1589  
9 4475 S. Pecos Road  
10 Las Vegas, NV 89121  
11 Attorney for Defendant/Counterclaimant  
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing was made this \_\_\_\_\_ day of February, 2016, by electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System, to each of the following on the E-Service Master List:

**Attorney General's Office**

Contact	Email
Linda Aouste	laouste@ag.nv.gov
Linda C. Anderson	landerson@ag.nv.gov
Nevada Attorney General	wiznetfilings@ag.nv.gov

**City of Las Vegas-City Attorney's Office**

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Cindy Kelly	ckelly@lasvegasnevada.gov
John A. Curtas, Esq.	jacurtas@lasvegasnevada.gov
Kelli Hansen	khansen@lasvegasnevada.gov

**Cooper Levenson, P.A.**

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Sheldon Herbert	sherbert@smithshapiro.com
Jill Berghammer	jberghammer@smithshapiro.com

/s/ Diane L. Hutchings  
An employee of Michael H. Singer, Ltd.

# EXHIBIT

# 2

STATE OF NEVADA

BRIAN SANDOVAL  
*Governor*

MICHAEL J. WILLDEN  
*Director*



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)

## 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.

## 5.2. **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:

<b>Part I – 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

### 5.2.2. **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).

# EXHIBIT

# 3



STATE OF NEVADA

BRIAN SANDOVAL  
*Governor*

RICHARD WHITLEY, MS  
*Director*



CODY PHINNEY, MS  
*Administrator*

LEON RAVIN, MD  
*Acting Chief Medical Officer*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
MEDICAL MARIJUANA PROGRAM

4150 Technology Way, Suite 106  
Carson City, NV. 89706  
Telephone: (775) 684-3487 Fax: (775) 684-3213

May 02, 2016

Brenda Gunsallus  
Desert Aire Wellness (D169)  
307 Carole Little Court  
Henderson, NV 89014

Dear Ms. Gunsallus,

On May 02, 2016 the Division of Public and Behavioral Health Medical Marijuana Program conducted a routine inspection and audit of your dispensary establishment, Certificate #0951414922721118967. The Audit/Inspection results revealed that your establishment was in compliance with NRS/NAC 453A. No deficiencies were noted during the inspection. Please retain this letter for your files.

Should you have any questions concerning this matter, please contact our office at (702) 486-5405 for Southern Nevada establishments.

Sincerely,

Two handwritten signatures are present. The first signature, on the left, is "David Witkowski" and the second signature, on the right, is "Sheba Statham".

David Witkowski, Medical Marijuana Program Inspector  
Sheba Statham, Medical Marijuana Program Auditor

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)

§  
§  
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§  
§  
§

Case Type: **Other Civil Matters**  
Date Filed: **12/02/2015**  
Location: **Department 1**  
Cross-Reference Case Number: **A728448**  
Supreme Court No.: **70462**

### PARTY INFORMATION

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

### EVENTS & ORDERS OF THE COURT

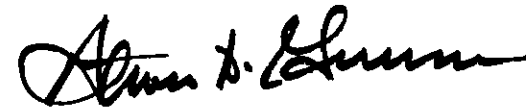
05/16/2016 **Motion For Reconsideration** (3:00 AM) (Judicial Officer Cory, Kenneth)  
*Defendant's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal*

#### 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](#)

JA978



CLERK OF THE COURT

1 NOAS

2 Richard Bryan, Nevada Bar No. 2029

3 Patrick Sheehan, Nevada Bar No. 3812

4 FENNEMORE CRAIG, P.C.

300 S. Fourth St., Suite 1400

Las Vegas, Nevada 89101

5 Margaret A. McLetchie, Nevada Bar No. 10931

6 Alina M. Shell, Nevada Bar No. 11711

MCLETCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

8 *Attorneys for Desert Aire Wellness, LLC*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, DIVISION OF PUBLIC  
16 AND BEHAVIORAL HEALTH OF THE  
17 DEPARTMENT OF HEALTH AND HUMAN  
18 SERVICES; CITY OF LAS VEGAS, a municipal  
19 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,

20 Defendants.

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

23 Counterclaimant,

24 vs.

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

27 Counterdefendant.  
28

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

**NOTICE OF APPEAL**

1 NOTICE IS HEREBY GIVEN that Desert Aire Wellness, LLC,  
2 Defendant/Counterclaimant ("Desert Aire") in the above entitled case, by and through its  
3 counsel of record, Richard Bryan and Patrick Sheehan, of the law firm FENNEMORE  
4 CRAIG, P.C., and Margaret A. McLetchie and Alina M. Shell, of the law firm MCLETCHIE  
5 SHELL, LLC, hereby appeals to the Nevada Supreme Court from the District Court's Order  
6 Granting Plaintiff/Respondent's Motion for Summary Judgment entered by this Court on  
7 April 28, 2016, attached hereto as Exhibit 1, the District Court's Order Denying Desert Aire  
8 Wellness, LLC's Motion to Reconsider/Motion to Alter or Amend Judgment in connection  
9 therewith, and all other orders made appealable thereby. This notice is given pursuant to  
10 Nevada Rule of Appellate Procedure 4(a)(1).

11 DATED this 25<sup>th</sup> day of May, 2016

12  
13 /s/ Margaret A. McLetchie

14 Margaret A. McLetchie, Nevada Bar No. 10931  
15 Alina M. Shell, Nevada Bar No. 11711  
16 MCLETCHIE SHELL LLC  
17 701 East Bridger Ave., Suite 520  
18 Las Vegas, NV 89101  
19 Telephone: (702) 728-5300  
20 Facsimile: (702) 425-8220  
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22 Richard Bryan, Nevada Bar No. 2029  
23 Patrick Sheehan, Nevada Bar No. 3812  
24 FENNEMORE CRAIG, P.C.  
25 300 S. Fourth St., Suite 1400  
26 Las Vegas, Nevada 89101  
27 Telephone: (702) 692-8000  
28 Facsimile: (702) 692-8099  
Email: psheehan@fclaw.com

*Attorneys for Desert Aire Wellness, LLC*

CERTIFICATE OF SERVICE

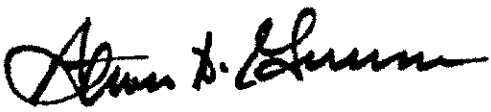
I hereby certify that I am an employee of MCLETCHIE SHELL, LLC, and that on the 25<sup>th</sup> day of May, 2016, I served a true and correct copy of the foregoing NOTICE OF APPEAL by e-serving a copy on all registered and listed as Service Recipients in Wiznet, the Court's online, electronic filing website, pursuant to Administrative Order 14-2, entered by Chief Judge Jennifer Togliatti, on May 9, 2014.

/s/ Pharan Burchfield  
Employee, McLetchie Shell, LLC

MCLETCHIE SHELL

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
WWW.NVLITIGATION.COM

# EXHIBIT 1



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,**

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

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.**

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

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.**

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**

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

13 Plaintiff,

Case No. A-15-728448-C

Dept. No. I

14 vs.

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

23 Defendants.

Date: March 15, 2016

Time: 9:00 a.m.

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

26 Counterclaimant,

27 vs.

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

Counterdefendant.

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

THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's  
("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant DESERT AIRE  
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 Deft(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

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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 \\\

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21. If any of the forgoing findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

### CONCLUSIONS OF LAW

22. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions and affidavits on file, show that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Bird v. Casa Royale W., 97 Nev. 67, 624 P.2d 17 (1981).

23. The Nevada Supreme Court has noted that "Rule 56 should not be regarded as a 'disfavored procedural shortcut'" but instead as an integral part of the rules of procedure as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." Wood v. Safeway, Inc., 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005).

24. NRS § 30.040 gives this Court the ability to make certain declarations regarding the rights, status or other legal relations of parties to a lawsuit.

25. Further, this Court has the authority to issue mandatory injunctions "to restore the status quo, to undo wrongful conditions." Leonard v. Stoebling, 102 Nev. 543, 728 P.2d 1358 (1986); Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc., 492 P.2d 123, 88 Nev. 1 (Nev., 1972).

26. One of the stated purposes of mandatory injunctions is "compelling the undoing of acts that had been illegally done." City of Reno v. Matley, 378 P.2d 256, 79 Nev. 49 (Nev., 1963).

27. The Division has acknowledged that a complaint for declaratory and injunctive relief is appropriate.

28. The issuance of the Provisional Certificate to Desert Aire was in error and contrary to NRS § 453A.322(3).

29. Desert Aire should have been disqualified due to their non-compliance with NRS § 453A.322(3)(a)(5).

30. If any of the forgoing conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

\\

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Henderson, NV 89074  
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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 14 day of April, 2016.

16  
17   
DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

20  
21   
22 James E. Shapiro, Esq.  
23 Nevada Bar No. 7907  
24 2520 Saint Rose Parkway, Suite 220  
25 Henderson, Nevada 89074  
26 Attorneys for Plaintiff  
27  
28

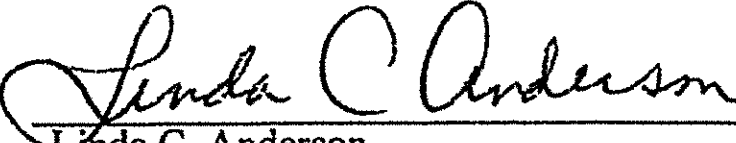
1 Approved:

2 MICHAEL H. SINGER, LTD.

Approved:

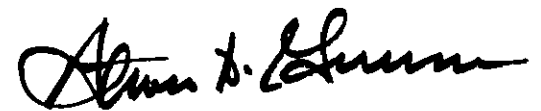
ADAM PAUL LAXALT,  
Attorney General

3  
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  
O:(702)318-5033 F:(702)318-5034





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/Counterdefendant,*  
6 *GB SCIENCES NEVADA, LLC*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

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

11 vs.

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

17 Defendants.

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

19 Counterclaimant,

20 vs.

Date: N/A  
Time: N/A

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

23 Counterdefendant.

24  
25 **NOTICE OF CROSS-APPEAL**

26 Notice is hereby given that Plaintiff/Counterdefendant GB SCIENCES NEVADA, LLC, a  
27 Nevada limited liability company, hereby cross-appeals to the Supreme Court of Nevada from the  
28 following:

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

1) The District Court's Order re: GB Sciences Nevada, LLC's Motion for Summary Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment, entered on April 28, 2016.

2) All other orders and rulings made appealable from the foregoing.

DATED this 25<sup>th</sup> day of May, 2016.

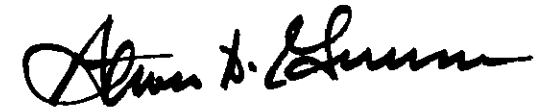
SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro  
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
Sheldon A. Herbert, Esq.  
Nevada Bar No. 5988  
2520 St. Rose Parkway, Suite #220  
Henderson, NV 89074  
*Attorneys for Plaintiff/Counterdefendant,*  
*GB SCIENCES NEVADA, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 25<sup>th</sup> day of May, 2016, I served a true and correct copy of the forgoing **NOTICE OF CROSS-APPEAL**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer  
An employee of SMITH & SHAPIRO, PLLC



CLERK OF THE COURT

1 **NOEJ**  
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 GB Sciences Nevada, LLC*

6 **DISTRICT COURT**  
7  
8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

16 Defendants.

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

Date: May 16, 2016  
Time: IN CHAMBERS

17  
18 AND RELATED CLAIMS  
19

20 **NOTICE OF ENTRY OF ORDER DENYING DESERT AIRE WELLNESS, LLC'S**  
21 **MOTION FOR RECONSIDERATION AND REQUEST THAT THE COURT REVERSE**  
**AND GRANT DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A**  
22 **MINIMUM GRANT A STAY PENDING AN APPEAL**

23 NOTICE OF HEREBY GIVEN that an **ORDER DENYING DESERT AIRE WELLNESS,**  
24 **LLC'S MOTION FOR RECONSIDERATION AND REQUEST THAT THE COURT**  
25 **REVERSE AND GRANT DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR**  
26 **AT A MINIMUM GRANT A STAY PENDING AN APPEAL**, was entered on 8<sup>th</sup> day of June,  
27 2016. A copy of said Order is attached hereto as Exhibit 1.

28 **///**

**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 Dated this 8<sup>th</sup> day of June, 2016.

2 SMITH & SHAPIRO, PLLC

3  
4 /s/ James E. Shapiro, Esq.

5 James E. Shapiro, Esq.  
6 Nevada Bar No. 7907  
7 Sheldon A. Herbert, Esq.  
8 Nevada Bar No. 5988  
9 2520 St. Rose Parkway, Suite 220  
10 Henderson, NV 89074  
11 *Attorneys for Plaintiff/Counterdefendant,*  
12 *GB Sciences Nevada, LLC*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 8<sup>th</sup> day  
15 of June, 2016, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**  
16 **DENYING DESERT AIRE WELLNESS, LLC'S MOTION FOR RECONSIDERATION AND**  
17 **REQUEST THAT THE COURT REVERSE AND GRANT DEFENDANT SUMMARY**  
18 **JUDGMENT TO DEFENDANT OR AT A MINIMUM GRANT A STAY PENDING AN**  
19 **APPEAL**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet,  
20 the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the  
21 Chief Judge, Jennifer Togliatti, on May 9, 2014.

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28  
/s/ Ashley Houston  
An employee of SMITH & SHAPIRO, PLLC

**Exhibit “1”**

**Exhibit “1”**

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CLERK OF THE COURT

1 **ORDR**

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 GB Sciences Nevada, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

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

25 Defendants.

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

Date: May 16, 2016  
Time: IN CHAMBERS

26 AND RELATED CLAIMS

27 **ORDER DENYING DESERT AIRE WELLNESS, LLC'S MOTION FOR**  
28 **RECONSIDERATION AND REQUEST THAT THE COURT REVERSE AND GRANT**  
**DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A MINIMUM**  
**GRANT A STAY PENDING AN APPEAL**

29 THIS MATTER having come before the Court on May 16, 2016, in Chambers, on  
30 Defendant/Counterclaimant Desert Aire Wellness, LLC's Motion for Reconsideration and Request  
31 that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum  
32 Grant a Stay Pending an Appeal (the "Motion for Reconsideration"), filed by and through its  
33 counsel, FENNEMORE CRAIG, P.C.; the Motion for Reconsideration having been opposed by  
34 Plaintiff/Counterdefendant GB Sciences Nevada, LLC, by and through its counsel, SMITH &

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1 SHAPIRO, PLLC; the Motion for Reconsideration having been responded to by Defendant State of  
2 Nevada, the Court having reviewed the papers and pleadings on file herein, the Court being fully  
3 advised in the premises, and GOOD CAUSE APPEARING therefore;


4 IT IS HEREBY ORDERED that the Motion for Reconsideration is DENIED IN ITS  
5 ENTIRETY.

6 DATED: 6<sup>th</sup> day of June, 2016

7  
8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 SMITH & SHAPIRO, PLLC

12   
13 James E. Shapiro, Esq.  
14 Nevada Bar No. 7907  
15 Sheldon A. Herbert, Esq.  
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17 2520 St. Rose Parkway, Suite 220  
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19 Attorneys for Plaintiff/Counterdefendant,  
20 GB Sciences Nevada, LLC  
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