

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

SAMANTHA INC., d/b/a SAMANTHA'S
REMEDIES, a Domestic Corporation,

Respondent.

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District Court No. 4-A-10874
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 1 of 2

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11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 Samantha Inc., d/b/a Samantha's Remedies, a
14 Domestic Corporation,
15
16 Petitioner.
17 vs.
18 Department of Health and Human Services
19 Nevada Division of Public and Behavioral Health,
20 Medical Marijuana Establishment Program,
21
22 Respondent(s).

CASE NO. A-14-710874-J
DEPT. NO. VIII

PETITION FOR JUDICIAL REVIEW

23 COMES NOW, Petitioner, SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES,
24 ("Samantha's Remedies") by and through its attorney, KIMBERLY MAXSON-RUSHTON, of the
25 law firm of COOPER LEVENSON, P.A., and hereby petitions this Court for judicial review of the
26 application decision of the DEPARTMENT OF HEALTH AND HUMAN SERVICES, NEVADA
27 DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, MEDICAL MARIJUANA MEDICAL
28 MARIJUANA ESTABLISHMENT PROGRAM ("Division") in the administrative matter identified
29 by the Division as Reference No. 98468144852415974273.

30 This Petition for Judicial Review is filed pursuant to Nevada Revised Statute ("NRS") 233B.
31 130, which provides for judicial review of contested final decisions in Administrative Agency Cases.
32 Sec. NRS 233B.032.

1 Petitioner submits that the Division's review and ranking of the subject Application resulted in
2 the denial of a provisional approval of said Application. As such, Applicant is precluded from being
3 issued a Medical Marijuana Establishment ("MME") registration certificate, necessary in order to
4 operate a MME – Dispensary in the City of Las Vegas. Accordingly, Petitioner submits that the
5 Division's actions in this instance are inconsistent with and have exceeded the statutory and regulatory
6 authority set forth in NRS and NAC 453A, and are without question arbitrary and capricious.
7 Furthermore, the Division's refusal to reconsider the previously submitted application¹ is contrary to
8 the terms and provisions set forth in NRS 233B.130(4), as well as to the specific representations made
9 by Division representative, Chad Westom at the July 9, 2014, meeting of the Advisory Commission
10 on the Administration of Justice's Subcommittee on the Medical Use of Marijuana². As a result of the
11 notice from the Division on November 18, 2014, that there would be no further consideration of
12 applications filed during the August 2014 filing period, Petitioner construes said letter as the agency's
13 "final decision" therefore, this Petition is timely filed. *See*, NRS 233B.130(4).

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25 ¹ Please see attached Exhibit 1, letter to "All Affected Local Governmental Jurisdictions" from
26 Division Administrator R. Whitley dated November 18, 2014.

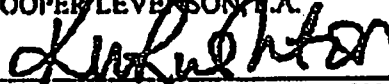
27 ² It should be noted that Mr. Westom's statement were made *prior to* the mandatory ten (10) day
28 application filing period, August 5-18, 2014.

1 The glaring inconsistencies and unlawful acts enumerated herein are demonstrative of the
2 Division's failure to provide Applicant with a fair and impartial review of its Application, consistent
3 with the all applicable statutes and regulations. Accordingly, Petitioner, Samantha's Remedies
4 submits that the Division's actions, relative to the review and ranking of its application, coupled with
5 the failure to reconsider said Application, violate the statutory authority contained in both NRS
6 453A.322 and NRS 233B.130. Therefore, Petitioner respectfully requests that this Honorable Court
7 remand the matter back to the Department of Health and Human Services Nevada Division of Public
8 and Behavioral Health, Medical Marijuana Establishment Program for further review on the
9 underlying Application of Samantha's Remedies, Reference No. 98468144852415974273,
10 Application Identifier: D003.

11 DATED this 8th day of December, 2014.

12
13 Respectfully submitted,

14 COOPER LEVENSON, N.A.

15 

16 KIMBERLY MAXSON-RUSHTON, ESQ.

17 Bar No. 005065

18 6060 Elton Avenue, Suite A

19 Las Vegas, Nevada 89107

20 Attorneys for Petitioner
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of COOPER LEVENSON, P.A. and that on this 8th day of December, 2014, I did cause a true and correct copy of the foregoing SAMANTHA INC. d/b/a SAMANTHA'S REMEDIES PETITION FOR JUDICIAL REVIEW to be placed in the United States mail, with first class postage prepaid thereon and addressed as follows:

Department of Health and Human Services
Nevada Division of Public and Behavioral Health,
Medical Marijuana Establishment Program
4150 Technology Way
Carson City, Nevada 89706

Nevada Attorney General
555 E. Washington Blvd., Suite 3900
Las Vegas, Nevada 89101

By: PK Kennedy
Patricia Kennedy, an employee of
COOPER LEVENSON, P.A.

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EXHIBIT "1"

STATE OF NEVADA

BRIAN SANDOVAL
Governor

ROMANIE GILLIAND
Director



RICHARD W. STEVENS
Attorney General

NACOLE D. GREGORY
Chief of Staff

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

November 18, 2014

To All Affected Local Governmental Jurisdictions:

The purpose of this letter is to provide clarification and additional information to the local governmental jurisdictions concerning whether the Division of Public and Behavioral Health (DPBH) application scoring process would include "moving down" the Medical Marijuana Establishment (MME) applicants ranking list. When DPBH staff represented that the Division would move to the next ranked applicant if a local jurisdiction did not provide zoning or business license approval, the DPBH staff had not considered the need for the full 90-day application review period for a complete review of all \$19 establishment applications.

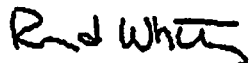
The Division objectively scored and ranked the MME applications for each jurisdiction. The Division's process focused on public health and public safety as it relates to the use of marijuana for medical purposes, per Nevada Revised Statutes (NRS) Chapter 453A. The regulatory criteria the Division evaluated included the following: the experience, education and backgrounds of the owners and operators; impact on the community; specifics regarding the labeling of products; the use of independent testing laboratories for product safety; transportation plans for moving the medical marijuana; appropriate building and product security; and plans for educating MME staff and the patients. The scoring and ranking process required the entire statutorily-defined application review period.

NRS 453A.324 limits the number of provisional dispensary registration certificates that the Division can issue in each county. Further, NRS 453A.322 requires the Division to issue all provisional certificates not later than 90 days after receiving an application. At this time, the Division does not have the authority to move down to the next ranked applicant if an applicant who received a provisional registration is disqualified, or to issue any additional provisional certificates, because the 90-day application review period (August 5 to November 3, 2014) has elapsed. Therefore, certain prior communications by DPBH staff only pertained to the application review period.

If the local governmental jurisdiction that issues business licenses does not issue a business license to the provisionally approved MME, the establishment cannot operate. According to NAC 453A.324, the Division may revoke the registration certificate if the establishment is not

operational within 18 months from November 3, 2014, and the applicant would be prohibited from reapplying for a certificate for at least 12 months after that revocation. Subject to any changes by the 2015 Nevada Legislature, the Division will open up a new ten-day application period next calendar year if additional dispensaries are needed to fill the allotted dispensary quantity in local jurisdictions per NRS 453A.324.

Sincerely,



Richard Whitley MS, Administrator
Division of Public & Behavioral Health

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EXHIBIT "2"

**MINUTES OF THE
ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE'S
SUBCOMMITTEE ON THE MEDICAL USE OF MARIJUANA**

JULY 9, 2014

The meeting of the Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana was called to order by Senator Tick Segerblom at 9:05 a.m. on July 9, 2014, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Yvanna Cancela, Political Director, Culinary Workers Union Local 226
Bob Coffin, Councilmember, City of Las Vegas
Russ Cuiolo, Sergeant, Las Vegas Metropolitan Police Department
Chris Giunchigliani, Commissioner, Clark County
Gary Modafferi, Esq.
Sandra Douglass Morgan, City Attorney, City of North Las Vegas
Jennifer Solas, Advocate for Persons Who Use Medical Marijuana
John Watkins, Esq.
Chad Westrom, Health Bureau Chief, Department of Health and Human Services, Division of Public and Behavioral Health
Kristina Wildeveld, Esq.
Assemblywoman Olivia Diaz, District No. 11 (via telephone)
Assemblywoman Michele Fiore, District No. 4
Senator Tick Segerblom, Chair, District No. 3

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Christine Jones Brady, Deputy Public Defender, Washoe County
~~Keith Munro, Assistant Attorney General~~
Hillary Schieve, Councilmember, City of Reno (via telephone)
Eric Spralley, Lieutenant, Washoe County Sheriff's Office
Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada
Senator Mark Hutchison, District No. 6

COMMITTEE MEMBERS ABSENT:

Frank Adorno, Patient Who Holds a Valid Registry Identification Card

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STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel
Angela Hartzler, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

John Sullivan, First Security Bank of Nevada
Cindy Brown
Julie Montero
David Kallas
Sal
Thomas Seralo
Timothy
Vicki Hagans
Raymond Fletcher
Wes Henderson
Mike Cathcart
Nicole Garcia
Kevin Schiller
Assemblyman William Horne
Regina Harris
Sara Cloutier
Nancy Wilden
Cary

Chair Segerblom opened the meeting at 9:05 a.m. He requested a roll call of members.

Mrs. Hartzler called the roll and a quorum was present.

Chair Segerblom stated that there was a full agenda today. He requested the members introduce themselves to the Committee.

Ms. Jones Brady said she worked for Washoe County Public Defender's Office. She represented clients with felony charges and the specialty courts. She worked with people with addictions or mental illness. She also had a background in anti-poverty work and in abuse and neglect cases regarding children. Her interest in the Committee was how the laws might impact people of lower income or with mental illness.

Ms. Canela said she was the political director of the Culinary Workers Union Local 226. Her interest was in understanding how policy affected workers within the bargaining unit plus other positions on the Strip and downtown.

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Mr. Coffin said he was a member of the Las Vegas City Council. He had been an advocate for medical marijuana for quite a while. He said he could bring a local government's perspective to the meetings. He hoped to get an owner-user of a co-op built out of the group's work. He intended to fully use medical marijuana when he can due to a spinal fracture.

Mr. Cutolo was with the Las Vegas Metropolitan Police Department and had been for the past 17 years. He said he had been in narcotics law enforcement for the past 10 years. He said the focus for Metro was to ensure that the laws made sense. He said they wanted to make the public aware of what the law really was so a legal patient followed the law.

Ms. Olunchigliani said she had served in the Legislature for 16 years and sponsored the original medical marijuana bill in 2001. She said there were issues raised, and she looked forward to working with the Committee.

Mr. Modasferri said he was a constitutional and criminal defense attorney. He was chief of the narcotics Division in Honolulu and now had clients who were prosecuted under the old laws. He hoped to get input in how to deal with people in a fair manner.

Chair Segerblom said the Committee would be looking at ways to go back and revisit people who had criminal convictions for marijuana and reduce or remove the convictions.

Ms. Douglass Morgan said she was the City Attorney for North Las Vegas. She was a voice for the local jurisdictions. She advised the Mayor and Council for North Las Vegas including developing the land use and business license regulations for the project. She also supervised the Criminal Division which prosecuted claims which included marijuana offenses. She also represented the Police Department.

Mr. Munro said he was with the Nevada Attorney General's Office. He said his role was helping the state agencies carry out their duties with respect to this law.

Ms. Schieve said she was a Reno City Council member at large. She said the issue was important to her due to a personal experience with her mother. The effects of medical marijuana could continue to give her a better life.

Ms. Solas said she was a Las Vegas resident and for five years has led a social group for medical marijuana. Her primary interest was patient advocacy and patient rights.

Mr. Spradley said he was with the Washoe County Sheriff's Office. He said Sheriff Haley supported good public policy and the will of the voters.

Ms. Spinazola was the ACLU Legislative and Advocacy Director. She was present to watch civil liberties as they came up in the process, particularly in regards to information sharing between agencies.

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Mr. Watkins said he was a practicing lawyer, particularly defense work. He said his role was to point out the impropriety of the present law dealing with marijuana. He said there was a conflict with the medical marijuana and the criminal DUI laws. He said anybody who used marijuana lawfully was guilty of a DUI when they got in their car.

Mr. Westom was Bureau Chief for the State Division of Public and Behavioral Health. He said he had the obligation to implement S.B. 374 and the adopted regulations. He said his objective was to continue the program for card holders and get local governments up and running as soon as possible.

Ms. Wildeveld said she was a criminal defense attorney, lobbyist, and criminal litigator. She did death penalty defense and had never represented anyone who committed a murder while high on marijuana. She also did abuse and neglect cases concerning parents who lost children because of marijuana use. She also represented illegal and legal growers of marijuana.

Senator Hutchison was a co-founder of the medical marijuana bill. He said he looked forward to working with Chair Segerblom on this committee.

Assemblywoman Diaz was excited to be a member of the Committee. She was looking forward to gaining more knowledge in this subject area in order to have information for her constituents when they needed it.

Chair Segerblom said Assemblywoman Fiore had the courage to vote for the bill during the Session.

Assemblywoman Fiore said she was excited to be on the committee. She said it was important to take back the freedoms and responsibilities as adults and United States citizens. She said she was going to work on laws to release prisoners arrested.

Chair Segerblom said it was a committee with a lot of background and experience with the issues. He asked Mr. Westom to make a presentation.

Mr. Westom opened his presentation with an overview of the program. He said the Nevada Constitution was changed to allow for medical marijuana. The new bill, S.B. 374, introduced the dispensaries and the cultivation facilities, and production for edible marijuana products and laboratories. He said his department would start reviewing applications on August 5, 2014, Exhibit C. The medical marijuana dispensaries would only be open for those who were cardholders. He said the discussions had started in 2001, then revisions were made in 2003, 2009, and 2013.

Chair Segerblom asked Mr. Westom to explain how the application process would work. He said some entities plan to give a letter to the applicant to go with their application to the State. Another entity said they plan to recommend a specific 18 applicants only. He asked if the State looked at the applications by jurisdiction or ranked them.

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~~Subcommittee on the Medical Use of Marijuana~~

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Mr. Westom said they will receive applications for certificates from August 5 through August 18, 2014. He said they were following Chapter 453A of NRS and the regulations derived from the statutes and adopted. He said it was a merit based review, scoring and ranking by jurisdiction. They had specific criteria they had to review and they had developed a process to do so, Exhibit C. He said there was an overview of the scoring on their website at Health.NV.gov. The application was there for review and it gave all the different categories of subjects they were reviewing and a point value for each subject.

Chair Segerblom said Clark County picked 18 applicants as their favorites. He asked if it made a difference that Clark County picked those people and did it affect the state scoring system.

Mr. Westom said they would review all the applications they received. He said they would review more than the 18 recommended by an entity. The rankings may differ and there was no assurance they would choose the same 18 applicants.

Chair Segerblom asked if there was a way to give credit in the state's merit system that Clark County said they liked certain groups or locations.

Mr. Westom replied that it was part of the process for the applicants to provide evidence of local zoning and business licensing approval.

Ms. Douglass Morgan said her review of the regulations did not show any contemplation of local jurisdiction approval of a business license. She said the medical marijuana certificate issued by the State was provisional until it was approved by the local jurisdiction.

Mr. Westom said it did talk about local government approvals. He said in some jurisdictions there were no business licenses issued.

Ms. Douglass Morgan said whether or not a business had the proper zoning was contemplated and that could be determined with a zoning verification letter.

Mr. Westom said the provisional certificates were issued so the local jurisdictions could approve.

Ms. Giunchigliani said a number of people said they were going to give nonprofits some assistance. She said she could not find anything in statute directing that as part of the merit base. She asked if that was a voluntary effort.

Mr. Westom said there were categories that spoke to community impact and other criteria where their contributions to non-profits and other entities were a factor.

Ms. Giunchigliani said she would like to see the sections where those categories were referenced.

Senator Hutchison asked Mr. Westom how it was going to work. He said he assumed the State was starting with a base analysis of the statute. He referred to Section 11.7 of S.B. 374 where

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the law required certain criteria be applied in evaluating the applications before the certifications were issued. He said it included contemplation of taxes paid to integrated plans from seed to sell. He said they went to a for-profit model as opposed to a nonprofit model for a specific reason from the law enforcement standpoint.

Mr. Westom said they were looking at the criteria mentioned.

Senator Hutchison said when looking at the 18 applications approved by Clark County, they would be evaluating independently of the County's analysis in terms of who the best ranked applicants were. He said if applicants satisfied more of Section 11.7 in the statute, but were not included as part of the 18, the State would look at the applicants.

Ms. Jones Brady said government transparency was important to her. She asked what things were in place to ensure that things were transparent and consistent. She said there needed to be discussion around how or why decisions vary significantly. The other thing she was concerned about was the for-profit mode. She said transparency was very important and people were in the business to make money and a profit as opposed to helping a community.

Mr. Westom said Clark County and some other jurisdictions reviewed criteria at the local level. At the state level, they reviewed the entire operation. He said much of the information they received was confidential and they released what information they could, but did not have full transparency because of the law. They will release the information about those who received provisional certificates along with their rankings, Exhibit C. He said they would not release information if the applicant did not sign a release form.

Assemblywoman Fiore commented about the nonprofit issue. She said the pharmaceutical companies and alcohol companies were for profit. The new medical marijuana businesses moving to Nevada will be giving a lot back to charity. She said it was a for-profit company.

Chair Segerblom said they made it for-profit because law enforcement suggested it and they wanted to bring the best and brightest from around the country to Nevada. He said they had received interest and applications from around the country of people with backgrounds from all varieties.

Ms. Giunchigliani said she thought the for-profit base made the most sense. She said nonprofits found a way around the rules and went underground. She wanted it as legal as possible. She said merit base would use Section 11.7, but the regulations added some additional information. They needed experts from out of state to assist. She was concerned about the staff available for the State. She asked what the turn-around time was for decisions and implementation back to local governments for final approval.

Mr. Westom said it was all factored in, including the vertical model proposal. He said each aspect would be reviewed separately. The time frame was 90 days to review all medical

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marijuana applications in the state. He said they were staffed to meet the demand. They had a combination of state employees as well as contracted staff.

Ms. Giunchigliani asked if they did a disclosure so there were no conflicts or business interests.

Mr. Coffin said the bill was still in flux in order to meet things still needing solutions. He brought up an issue of an owner-grower co-op. He said he had not seen applications, but hoped for an incentive for owner-growers. He requested Mr. Westom keep the committee informed of all the things that arise concerning the issues. He asked a question about the selection of the 18 people chosen by the county, but the state chose the 19th person. He wondered what that did to the one who was number 18.

Mr. Westom said they will receive all the applications of people who apply across the state. He said they would come up with the highest 18 rankings in Clark County and issue provisional certificates. He said Clark County then had the option of denying the businesses at a local level. If they are denied at the local level, then the State will also deny them and the State would let Clark County know who was the next ranked entity.

Mr. Coffin said they would not know who was ranked because of confidential laws.

Mr. Westom said they would publish those rankings, but not in detail due to confidentiality clauses. They would be in conversation with the local government.

Chair Segerblom asked if Mr. Westom said they were going to publish the rankings of everyone who applied in the district or just the number the jurisdiction was eligible to receive.

Mr. Westom referred to Exhibit C. He said they were issuing a release form to applicants and if they chose to sign it, then their ranking and score would be released.

Ms. Wildeveld said the City was requiring a copy of the State application for the licensing process. The State was supposed to be ranking the applications blindly. She asked if there was information sharing or was the State portion of the City application confidential.

Mr. Westom said he would do his best to answer the question. He said he had no comment on what the local governments decided to do. He said the ranking and review had identified and unidentified criteria in the application.

Mr. Modafferi said the 18 people approved by the County will end up with the licenses. He said there was going to be a push-back. He asked if that was correct.

Mr. Westom said the State process was merit based and it followed the statutes and regulations. The applications outlined their requests and they would review, ranking and scoring the applications regardless of what occurred at a local level.

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Mr. Modafferi said after the ranking was accomplished, local government would have carte blanche power to choose the applicants.

Mr. Westom said they will notify the applicants that the State was planning on issuing them provisional certificates and then they will notify the local government of the highest rankings. It will then be up to Clark County to decide what they want to do. If the county denies an applicant, then the State will also deny them and then notify the county of the next ranked applicant.

Ms. Giunchigliani said Clark County kept alive all the other applicants besides the 18 in case the State did not select the same people.

Mr. Westom gave a brief overview of the current process as outlined in Exhibit C. He said the security would be huge and there would be automatic notification to law enforcement if there was a security breach. He said it was important that the packaging had strict guidelines. The packaging was child resistant.

Ms. Jones Brady said she had seen cards and certificates from California. She asked if the medical marijuana cards and certificates have consistency and a professional appearance as well as being difficult to forge.

Mr. Westom said at least three documents were relevant to her concern. The existing marijuana patient cards were processed in a partnership between DMV, DPS and his office. He said there were a lot of security features. The Division issuing the medical marijuana agent cards or employees will have similar security features. The medical marijuana provisional certificates will be printed with security features like other licenses and certificates issued by the Division. He said they print a lot of certificates that are health related.

Mr. Watkins asked about child resistant packaging. He asked for a description of the packaging that would prevent children and other members from gaining access to the drug.

Mr. Westom said the regulations called out specifics on child resistant packaging. They review each applicants packaging and have a routine inspection at least once per year of the establishments. He said they had appropriate enforcement ability at the establishments to curtail packaging not in the best interest of children.

Mr. Watkins suggested that the packaging have a zip lock with an actual lock and the cardholder would have the key. He said they needed to make sure children and unauthorized adults do not get into the package.

Mr. Westom said they had 12 new positions and projected 15 contracted employees would be necessary to assist in reviewing the applications. He said the contractors had different specialties.

Chair Segorblom said Clark County did not limit the number of grows or edibles in the state law. He asked if there was some type of limited cultivation.

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Mr. Westom referenced Exhibit C. He said they wanted to be sure the supply was sufficient. He said if the supply authorized was far greater than the demand, then illegal diversion was a risk. The adopted regulations said the Division may limit the cultivation in the State. It would have to happen through a public hearing. He said they know how much square footage was needed in a cultivation facility to grow medical marijuana. He said they also factored in the reciprocity factor from other states. They were projecting a range of 600,000 square feet of cultivation up to almost 1 million.

Chair Segerblom asked if the Division had projected the number of cards needed for next year.

Mr. Westom said currently there were over 6,000 medical marijuana cardholders and a number of caregivers in Nevada. He said the numbers were growing rapidly. They issued statewide numbers only and it was posted on the website.

Mr. Watkins said he understood that police will have, in their scopes, the individuals who have marijuana cards.

Mr. Westom said they already had a process for law enforcement purposes where they can look at the data base to see if someone was a cardholder.

Mr. Watkins said the police could look at the card and run the information.

Mr. Westom said he could not comment on that.

Mr. Cutolo said part of S.B. 374 required law enforcement to have access to cardholders information in order to verify the card. He said the access was limited and the list was updated daily. It did not give names or addresses of the cardholder.

Mr. Watkins said the police would then not have any access or knowledge that a person driving a car was a marijuana user.

Mr. Cutolo said the information was removed from DMV four or five years ago.

Mr. Westom referred to the process of receiving the card as outlined in Exhibit C.

Chair Segerblom said within the year the State could have 50,000 card holders. He asked if there was enough staff to process that number of cards next year.

Mr. Westom said if Chair Segerblom was correct and they had 50,000 cardholders rather than the 6,300 currently projected, they did not have enough staff. He said they had systems in place to request the resources to meet the demand.

Chair Segerblom asked if the money for the cards went to the Division.

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Mr. Westom said the funding for the medical marijuana card holder program and the medical marijuana establishment program were held separately. He said the division was flexible and would ask for additional resources if necessary.

Mr. Westom said when they completed the application and turned it in, there was a letter that gave them 30 days as a cardholder until they received their card.

Ms. Solas asked if the statistical page looked different earlier. She said she remembered a separation of age and who had the card and their condition.

Mr. Westom said he did not have that information.

Ms. Solas said about two years ago the age of the person was released. She said it made it convenient to point out that it was not just young kids getting on the program. The majority of card holders were over 30.

Mr. Westom said she was correct, but it was not on their site due to confidentiality requirements.

Chair Segerblom said that might need to change to show who was participating and their age groups.

Ms. Solas said she would like to see the ages of the cardholders and the zip code so they could see where the population was located and who needed the medication.

Chair Segerblom reopened the meeting with a request for public comment.

J. Laub, President of the Las Vegas Medical Marijuana Association said they would continue to focus the industry to serve patients. He said it was to help the patient. He said the organization was working with doctors, researchers, and the University.

John Sullivan, President and CEO of First Security Bank of Nevada, said his bank was willing to provide banking services to medical marijuana establishments in the State. He said they did so out of compassion for individuals who required the medication. He said he had met many of the applicants in the past few months. It was still a grey area in the law, grey on the federal level. Any revenue derived from the sale of marijuana was still illegal. He said in February the Financial Crimes Enforcement Network, (FINCEN) released guidance to the banks. FINCEN said the services could receive banking services if they were in full compliance with the state and local laws and regulations. And secondly that the businesses do not violate the eight principles of the Cole Memorandum. He said they concluded it was possible to stay within the guidelines. He said FINCEN expected banks to implement robust monitoring systems in accordance with state law. The marijuana operations had to be complying with state and local laws. He said they also had to know who the customer was, how they operated and what revenue and currency deposits they were making. He said they had to track the customer. One area of guidance beneficial for

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the committee was that FINCEN encouraged banks to establish lines of communication with state and local governments. He said the monitoring systems were a huge burden for the banks. The Cole Memo stated that they needed to remove the danger of an all cash business. He said huge sanctions can be imposed on financial systems that do not follow the regulations.

Chair Segerblom said Mr. Jones would meet with Mr. Sullivan about ways the committee could propose a bill to help the banking industry in Nevada. He added that Item VII of the Agenda, concerning credit unions, was pulled because they wanted more time before they made a presentation.

Cindy Brown said in Nevada the patients were required to be experts on marijuana. She wanted each dispensary to have at least one patient on their board.

Julie Montero said she was a registered nurse in Nevada. She said limiting the number of cultivation facilities seemed to limit patient access. She said the patients were having difficulty with the cards due to the length of the process.

Chair Segerblom requested she email her ideas to the committee.

David Kallas said he was a cardholder. He said he understood the need to protect children from access to the medication but it was important to remember it was medication and pharmacies were not required to put locks on the medicines they dispensed. He said the cost of locks would be passed on to the patient. He asked for a trial run on the application process to make sure an agricultural specialist did not evaluate everything they might not have knowledge about.

Mr. Watkins said child resistance packaging was not the case. He said he just wanted to show that child resistant packaging was not child resistant.

Ms. Solas said she went to Colorado and looked at their packaging and the packaging sold at the major conventions. She said the packaging sold in Colorado was harder to get into than aspirin or oxycodone.

Sal said the people on the board seemed open-minded and logical on this topic. He said he was a caregiver. He was concerned that the opportunities to get into this industry were limited to wealthy people. He said limiting the amount of growers reduced the quality of the medicine. He said from his personal experience small gardens produced the best medicine over bigger gardens.

Assemblywoman Fiore asked Sal to email him ideas to her.

Thomas Scrato said he was a medical marijuana cardholder. He discussed concentrates made with a butane product. He said it took a natural product and applied gas to reduce it down. The butane was not totally removed from the product. He said he was able to offer a product that never put butane on the product. He said methane gas was completely natural. He added exploding hash labs were a serious problem.

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Timothy said he had numerous concerns. He said S.B. 174 caused patients a lot of problems. He had to go to Colorado to be licensed. He said a patient only had a limited amount of funds. He said the system did not protect the patient and their medicine. He feared not being able to grow his own medicine. He said there was no scientific research concerning driving under the influence of cannabis.

Vicki Hagans said tax and political donations from the past as well as time should be considered. She said a swab test for the DUI and job issues are being developed at this time. She asked if there was a projected date after the applications were approved.

Chair Segerblom said it had to be by 90 days for the State.

Ms. Hagans said California had hundreds of different cards. She asked how to define too much medicine. Each dispensary needed 3 to 5 cultivation systems. The concentrates take a vast amount to make them. She said they needed to consider not putting limitations on cultivation. Patients needed to maintain their own gardens. She said agent cards were very expensive.

Chair Segerblom requested she email all of her suggestions to the committee.

Raymond Fletcher requested that they look at protection for patients as far as work. He lost his employment even though he was a medical marijuana patient. He said Voc-Rehab programs will throw them out if they use marijuana. He said they do not want to limit the ability for patients to grow their own.

Mr. Kallas requested they ask the state representatives from the Division of Public Health to post their presentation on their website.

Mr. Westom said it was on the legislative website and they would put it on the Division's website.

Mr. Westom said he had covered the majority of the presentation. He asked if there were more questions.

Ms. Solas said the medical marijuana registry card took about 21 days to receive. She said she had not seen that level of turn around. She said they help people with the process.

Mr. Westom asked if the patient had sent in her card on the 21st of June.

Ms. Solas replied she sent it on the 21st of June and had not received anything in the mail. She said other patients turn-around time seemed more like about 6 weeks.

Ms. Westom said the calculations averaged 21 to 27 days for turnaround depending on when it was sent. He said the demand increased dramatically. They were adding additional resources to

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be sure they were in compliance with the law, but did not have the resources to take the required 30 days and bring it down to 5 or 10 days. He said the background check required approximately 12 days.

Ms. Douglass Morgan said the estimated amount for grows was between 600,000 to 1 million square feet for the entire state. She said there was no public hearing scheduled to limit the number of cultivation growers.

Mr. Westom said she was correct. Public hearings required a 30 day notice. He said the estimates were given to meet the projected needs of Nevada patients as well as reciprocity with other states. He said that was not a limited, but rather a work load analysis.

Chair Segerblom asked if they gave a grow license did they have the ability to withdraw it or scale it back if there was too much product.

Mr. Westom said they did not have an exact process at this time. It would have to go to a public hearing.

Ms. Giunchigliani asked when the resapplication period would occur.

Mr. Westom said it was not scheduled at this time.

Ms. Giunchigliani asked if local business license departments needed to inspect the establishments.

Mr. Westom said it depended on decisions made at the local level. The state usually did not have a comment on local processes.

Ms. Giunchigliani said she appreciated Mr. Sullivan and the banks adding that there may be some flexibility there. She was curious about the no ex-felons rule working there. She said Nevada reinstated felon rights and she hoped they were not permanently barring people from working. She asked if someone changed their partners before the State opened their applications, what would happen.

Mr. Westom said they reviewed what was on the application when it was received. He said it would not be a factor if the ownership was different from the application for zoning or business licensing.

Ms. Giunchigliani said on the local level they might have voided themselves if they made changes. She said the original bill contained language about the attending physician. The attending physician was a physician licensed to practice medicine and had primary responsibility for the care and treatment of the patient with a debilitating medical condition. She wanted to make sure it was still a condition in the bill.

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Mr. Westom said yes, those were things reviewed by staff for medical marijuana patient holders. Ms. Giunchigliani wanted to reinforce the idea of licensed physicians in the state.

Mr. Westom said there was a provision that they make themselves aware of recommendations from physicians for potential conflicts.

Mr. Coffin asked about sharing information on inspections. The City of Las Vegas wanted to know if someone failed or was in jeopardy of losing their special use permits. He asked how they received the information.

Mr. Westom said he hoped it would be the same as other programs and readily available. He said other programs, special reports were posted on the websites. That was the quickest way to get the information out to the local governments.

Ms. Wildeveld commented that people concerned about receiving medical marijuana from a dispensary said some applications contemplated giving free medical marijuana to certain individuals. She asked if there was a standardized system for tracking and verifying state issued cards that the establishments were using. She said people would be coming from all over the country and wondered how they would know if a card is legitimate.

Mr. Westom said the law required the dispensaries verify that the cards are legitimate. He said in 2016 the State will have worked with other states to try and have verification of the cards through electronic systems. He said it was difficult because not all states had electronic systems.

Ms. Wildeveld asked about regulations changing the ownership of establishments once the license was granted.

Chair Segerblom said the law did not provide for the change of ownership. He said one of the purposes of the Committee was to design and process the transfer of ownership.

Mr. Spratley asked about the square footage needed for production facilities. He inquired about one applicant applying for the whole 1 million square feet of production, would it then be limited to one facility in the State or would they still allow other facilities.

Mr. Westom replied the production he mentioned of 600,000 to 1 million square feet of cultivation facility was for the growing. He said a super facility needed to rank in score high enough on their application to have that spot.

Chair Segerblom said he thought they were not going to rank the growers, but were going to approve all the growers until they had the public hearing.

Mr. Westom said they had to be sure that what was proposed was in compliance with the regulations and statutes. He said until they had the hearing, they could not limit production. He said he had not heard of any one proposing 1 million square feet.

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Mr. Spratley said it was a concern from the law enforcement point of view.

Wes Henderson, Director, Nevada League of Cities and Municipalities, said Ms. Garcia and Mr. Cathcart were also present. Mr. Henderson gave a brief overview of actions of the various cities and towns throughout the State, Exhibit D. He said there were a variety of responses concerning medical marijuana. He said two or three cities prohibited the establishment of facilities within their jurisdictions; however, one city was reconsidering its decision. Several cities had not taken any action, and some cities had enforced moratoriums from six months to two years. He said some cities had voiced concerns regarding the federal prohibition against marijuana. He said other cities had adopted regulations and were accepting applications.

Chair Segerblom said some rural counties had one or two incorporated cities but large geographical distances. He asked if they needed to increase the number of dispensaries for those counties.

Mr. Henderson said it had been expressed as a concern. He said there were no incorporated cities in Nye County, but there is the town of Pahrump.

Mr. Mike Cathcart, Business Operations Manager, City of Henderson, talked about their process. The council adopted ordinances on July 1, 2014, and opened the application process on July 7, 2014. He said they had received a lot of questions and calls but no applications to date. He said they had seven classes of different medical marijuana establishments. They were not selecting any number of applicants before the state process. He said when the list was returned from the State, the Council would look at doing the permits and issuing the business licenses. He said they were concerned they might not get their entire ranked list back.

Mr. Westom said they would send the top ranked to the City of Henderson. He said if an application was denied at the local level, the State also denied it and would let them know who was the next ranked entity.

Chair Segerblom thought he heard the whole ranking was public information. He asked if the city would not know who was ranked next after the first five entities.

Mr. Westom said it was two different processes. He said one was the discussion of what was released publicly and the other was conversations with the local governments. He said it was subject to the applicants signing the release of information.

Mr. Cathcart was concerned about the open meeting law, and they also wished to have vertically integrated establishments. He said if a dispenser was ranked number 6 on the list but ranked as the number 1 cultivator, they wanted the flexibility to license them as a vertically integrated establishment.

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Chair Segerblom asked Mr. Westom if the total rankings on the website would not necessarily be given directly to the city.

Mr. Westom said they did not have exact dates and when it would be posted to the website. They were still revising the process.

Ms. Douglass Morgan said they did not have the different classifications. She said they did not want to have to wait too long to receive the information and rankings.

Mr. Westom said their process was to issue the provisional certificates to the top ranked for the jurisdiction. He said they would look at the dispensaries being in the appropriate places for the patients. They were not authorized to approve someone who was not properly ranked. He said it was a merit based system.

Ms. Nicole Garcia, Henderson City Attorney's Office, reviewed the regulations the State presented as a rationale for withholding the entire list. She said they did not find anything in the regulations that prevented the State from giving them the entire list of qualified applicants. The legislature gave the cities the ability to regulate the zoning and the business licensing.

Ms. Giunchigliani said she did not want political bid shopping. She said it was not the whole list because it was merit based at the State level. She asked about a denial coming in at the State level.

Mr. Westom replied that once they got past the applicant issued provisional certificates, local approval of the businesses was required. He said at the point the local government denied the business, the State followed suit and denied the certificate.

Ms. Giunchigliani said they should not jump all over the list.

Ms. Garcia said they wanted the State to do the vetting of the applicants and the city gave a lot of weight to how the State ranked them. She said Henderson did not want clustered dispensaries.

Kevin Schiller, Assistant Manager Washoe County, gave a quick update concerning Washoe County. They passed regulatory and code changes in April. They provided provisional zoning letters and worked with the State around remaining issues. They were looking at locations including the other holders.

Chair Segerblom opened discussion on Agenda Item VIII, laws governing driving under the influence of marijuana.

Mr. Anthony said he had assembled a two-part handout; one on the National Conference of State Legislatures, Exhibit E, and the other a colored chart on DUI laws, Exhibit E. He said driving under the influence of a controlled substance was different than a traditional DUI. He said there was a .08 standard for driving under the influence. He said it was a per se standard meaning if the blood alcohol level was over .08, a person was considered impaired. Some states had effect

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based laws where the officers had to prove you were impaired. There were also zero tolerance states where if you had any amount of a controlled substance in your system, you were presumed to be guilty. He said Nevada was a per se state that set out various requirements for controlled substances. He said in Nevada, urine level was 10 nanograms per milliliter for marijuana and 15 nanograms for marijuana metabolite. In terms of blood for marijuana, it was 2 nanograms and 5 metabolites. He said there had been earlier attempts to carve out exceptions for medical marijuana use. Mr. Anthony referenced Exhibit E, the highlighted map. He said 6 states had per se limits similar to Nevada; 11 states had zero tolerance; the remaining 33 states had effect based laws and it was up to the prosecution to prove.

Chair Segerblom asked about the California law. He said the officer determined whether or not there was impairment and then there was some type of test.

Mr. Anthony said yes, that was his understanding. In California you were given a field sobriety test and if you failed, then you received blood and urine tests and it would be admissible in court.

Mr. Coffin asked how much marijuana had to be consumed to reach the 5 nanogram amount. He asked if it was literally a trace of exposure.

Mr. Anthony said that was one of the issues debated. He said for example, how long does it stay in the body and how is it metabolized. He said it was an emerging area of law.

Mr. Coffin said he was familiar with how much alcohol was involved, but what about a contact high for a person who had been near someone who smoked marijuana.

Mr. Watkins said there was a distinction between alcohol and marijuana. Alcohol was a "polar substance" which meant it loved water, and marijuana is non-polar and loved fat. When smoking the THC level rises rapidly and within 20 to 30 minutes it goes down quickly. He said 2 weeks later the marijuana THC in the fat can travel into the blood. He said the studies dealing with marijuana and driving did not show impairment in the numerical levels. We were putting people in jail who were not impaired. He said the nanogram numbers were plucked out of the air. He said the impairment standard was a better way.

Ms. Jones Brady said it was prison, not just jail.

Assemblyman Horne said he represented clients seeking medical marijuana licenses. Last session he sponsored a bill calling for a carve-out for patients with medical marijuana cards who were detained by police. He said the bill was a fairness issue. Medical marijuana card users were detained by police. Medicinal cannabis was the only medicine with limits on it. He said law enforcement had all the tools for proving impairment through field sobriety tests. People said his bill would allow more drunk drivers on the streets. He said nothing in the bill prevented medical marijuana cardholders from being prosecuted for driving under the influence. He said the prosecution still had to prove their case. He recommended another BDR similar to the one last session.

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Ms. Giunchigliani said she tried to deal with the drunken driving issue in A.B. 351 from the 2003 session. She said marijuana and cocaine were added to the Prohibited Substances Act in 1999. She said the research did not tell what a metabolite was for cocaine and marijuana. They could change the substance act. She said it needed to be actual blood testing, not urine testing. The two nanograms needed to be looked at, not the metabolite. The U.S. Department of Health and Human Services said they ranked 15 nanograms for the purpose of hiring, firing and screening people for federal employment. She said it was important to measure the right thing. The issue of impairment also had to be investigated.

Mr. Spratley said law enforcement was a willing partner in A.B. 351. He remembered holders of commercial driver's licenses were not affected by the bill. He said law enforcement wanted discussions regarding the law and to make sure they crafted laws that would affect drivers on the roadways. He said the Federal Motor Carrier Safety Administration had a ban on medical marijuana use for commercial license holders.

Chair Segerblom opened discussion on the Agenda Item IX, obtaining a medical marijuana identification card in Nevada and Arizona. He said they needed a way to simplify receiving a card.

Mr. Anthony referred to Exhibit G and Exhibit H. He said Exhibit G outlined the Nevada medical marijuana program and the other exhibit had information from Arizona, including a patient check list. He said in Nevada currently someone fills out a request for an application by mail, it cannot be done in person, and pays the required \$25 fee. The Division then sends a full application; the person fills it out and returns it with a \$75 fee. The Division checks it for completeness, and then within 30 days when there is a decision, the person can go get the card. He said in Nevada by statute and by regulation once the application is deemed complete the application can be treated like you were a cardholder.

Mr. Anthony said it appeared Arizona's process was much quicker. The application was done on-line, not in person. The on-line process returned the decision to the applicant within 10 business days. He did not find an exception grandfathering a person in once they applied for the card. He said they might have to wait the 10 full days before receiving the card. He said the other differences were very minor. Arizona had a slightly higher fee at \$150 and Nevada's was reduced this last year.

Chair Segerblom asked why they could not have an internet application as opposed to the current system.

Mr. Westom said they were looking at making the system more web based. The Division had a centralized licensing database system that was authorized and funded. He said they were looking at electronic systems but they took time to get.

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Ms. Giunchigliani said they could remove the request for part of the application. The DMV card was for an official ID that would prove out. She said dispensaries were in place with reciprocity in place with minimal verification. She said they needed to speed up the process and offer an official government ID to protect the patient.

Ms. Solas said as soon as the patient received a doctor's approval, they could use medical marijuana before they received the card. She said if they removed the requirement for a mailed application and allowed on-line applications for the \$25 fee, it removed 5 to 7 days in mail time. The application would still require the doctor's signature to start the process.

Mr. Spratley said law enforcement was very much opposed to moving away from the DMV. He said it was a good card, they recognized it, and it was hard to forge. He said DMV did a fantastic job of producing medical marijuana cards in Nevada.

Ms. Solas said she had been stopped by law enforcement and they were unable to access her information until she handed them the card. She said the card made her feel safe.

Mr. Westom asked Mr. Anthony if Arizona gave any information about the background checks of the patients.

Mr. Anthony said he did not recall Arizona having as detailed a background check. He said they did fingerprints, but they had moved away from that.

Chair Segerblom added that felons were excluded from medical marijuana. He asked Ms. Regina Harris to come forward. She claims to have invented a new way to issue medical marijuana cards.

Regina Harris said she was with Get Legal 420. She said they provided residents with chronic and debilitating conditions support with the medical marijuana cards.

Sara Cloutier said the service was designed to accommodate patients in need of the card. She said they were a mobile service. They were looking forward to working with nonprofit organizations to help them mitigate fees for patients in need. She said they were developing a full service medical marijuana kiosk allowing patients to automatically upload their information to the State, be evaluated by an attending physician via telemedicine, and acquire their temporary ID all at once. She said the machine had the capability of providing diet programs and stress tests, as well as on-line health monitoring.

Ms. Harris said they wanted to schedule, at a later date, a time to demonstrate the prototype.

Ms. Solas was concerned about degrading the medical profession by not having a doctor physically examine the person.

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Ms. Harris said there was a blood pressure cuff, a scale, and monitoring for temperature. She said it was everything you were able to do in a doctor's office basically through telemedicine.

Chair Segerblom asked if the doctor was not present but was watching the patient.

Ms. Harris said yes, it was similar to Skype, the doctor was on the other side of the monitor. It had face recognition and could do an evaluation right then and upload the information to the State.

Ms. Giunchigliani said she thought they were promoting a business rather than wellness. She asked what they charged a patient.

Ms. Harris asked if she meant for their service to help them register for the card. She said they charged \$299 which covered the state fee, the doctor's evaluation, the notary and all the paperwork. She said they were a mobile service and went directly to the patient. She said they took out the tedious process by doing it for them.

Ms. Giunchigliani said under state law the doctor had to have the primary responsibility for the care and treatment of the patient, not be a drive-by. She was concerned, and she did not want to put people at risk.

Chair Segerblom said this was marijuana, not cocaine or heroin. They could change the law.

Ms. Giunchigliani said it was very clear that the voters had voted to allow you to be recognized by the card.

Ms. Harris said if the patient already had an attending physician they offered to take the doctor's fees out of the proposal.

Chair Segerblom said he had a guy who was fired due to a work injury and he tested positive. He said he looked in the yellow pages, called them, met the doctor and they started delivering to the house.

Ms. Giunchigliani said you did not need to pay anybody \$100 bucks for the help.

Chair Segerblom said you do not need to pay, it was just the possibility out there. He said he was interested in the kiosk.

Senator Hutchison said the idea of electronic and web services needed to be investigated. He asked if they could schedule a time for the parties to present some of these topics; databased, web based, electronic based solutions to the challenges with the law.

Chair Segerblom referred to Exhibit J, five things he was interested in hearing for potential topics on future agendas. He said they would have at least two more and maybe three more meetings. He mentioned transfer of ownership of establishment licenses, additional dispensaries, the

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estimated number of cardholders, the process for new ID cards and whether doctors who prescribe should be listed on a state website.

Ms. Giunchigliani said they cannot use the word prescribe, they need to look at application or something. She said they needed to look at the statute restricting public health labs from participating. They needed to look at Senator Rawson's language added to a bill in 2001 which allowed for research by the University System, but they had to apply to the Federal Government. She recommended removing that language. She wanted to discuss allowing green houses to grow. She was also concerned about the drunk driving laws and any criminal statutes woven into the bill. She said growing one's own medical marijuana needed further discussion. Horticulture programs at the public institutions should be established. She said they needed to look at "candy production" so the kids had access to it. She was concerned about price gouging for cost of applications. She was concerned about restrictions going across county lines.

Senator Hutchison said the committee needed to address and talk about the challenges the cash business had and possible electronic solutions. He was also concerned about reciprocity and a databased system they could review.

Mr. Watkins said they needed to discuss the usage of marijuana and driving. People need their medicine and also need to be able to go to work.

Mr. Kallas said he agreed with Ms. Giunchigliani. He said this should be about the patients and not profit sharing. He said as soon as possible eliminate the request from the cardholder to the State to receive an application. He said it was a waste of time to have to justify why you wanted the application. He said in regards to reciprocity it was important to require that each dispensary receive all other state's copies of what they issued to the cardholders.

Chair Segerblom said all they were doing was asking them to sign an affidavit; they were not going to grill people.

Assemblyman Horne said it would be beneficial to dovetail the state process with the local process. He suggested the State being responsible for the caliber of the applicants and the local government responsible for the zoning. He said that might eliminate a lot of the confusion. He said gaming license holders were not permitted to participate, however, the gaming licensees were the most vetted people in Nevada. He said originally they wanted the most above reproach caliber of people participating. He wanted to be sure high-caliber people were involved. He said the issue on transporting cannabis across county lines needed discussion. He said if the state said someone was an appropriate grower, then perhaps it was against public policy for other counties that permitted it to block it and only allow those growing in their jurisdiction.

Thomas Serato, long time user and advocate, said protecting the children was the first and last cry of prohibition. He said nobody ever died from using marijuana. He said he had smoked for 40 years and had driven an auto since he was 8 years old and never had an accident or been cited. He said he would take any test designed.

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Nancy Wilden talked about clones. She said the cultivation sites are going to need 1,000 clones. Her brother was involved in cloning for almost 10 years. She had a group of gardeners who wanted to provide clones to the cultivation sites.

Chair Segerblom said they could sell 12 clones and give away 1,000.

Timothy said it was about wellness. He said he was forced out of the medical cannabis state registry in Nevada.

Chair Segerblom said he understood that what he wanted them to do was put free or really cheap marijuana into the law. He said they cannot do that until February.

Timothy said it was not about cheap cannabis. He said within the state's rehab medical system, he would like to use the opportunity to find jobs in the program.

Sal said the problem with verifying out-of-state people was that the dispensaries would be liable even if the customer signed an affidavit. He was in favor of telemedicine. He was concerned about a huge backlog in sending out cards.

Chair Segerblom said if they signed an affidavit, no one was liable.

Assemblywoman Fiore said if a dispensary in Nevada was not licensed or approved and not abiding by the laws, the officers will investigate and shut them down.

Julie Montero said she had patients who registered 300 nanograms. She recommended a clause where medical marijuana users were exempt from the 2 nanograms. She asked if there was a directory listing the doctors and dispensaries on a state website.

Mr. Westom said physicians were confidential, but dispensaries will become public.

Mr. Watkins said the law was 2 nanograms per milliliter.

Cary, secretary of the Board of Wellness Education Cannabis Advocates in Nevada, said he wanted to do away with plausible deniability for the police.

Chair Segerblom asked if there was any further public comment. He adjourned the meeting at 1:05 p.m.

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Respectfully Submitted:

Olivia Lodato, Interim Secretary

Approved By:

Senator Tick Segerblom, Chair

Dated: _____

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EXHIBITS

**Committee Name: Advisory Commission on the Administration of Justice's
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Time of Meeting: 9:00 a.m.

	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Chad Westom	Medical Marijuana Program
	D	Wes Henderson	NLC&M Marijuana Update
	E	Nick Anthony	Drugged Driving Per Se Laws
	F	Nick Anthony	Zero Tolerance Per Se Laws
	G	Nick Anthony	State Medical Marijuana Program
	H	Nick Anthony	Medical Marijuana Patient Checklist
	I	Chair Segerblom	Potential Topics for Future Agendas

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 Samantha Inc., d/b/a Samantha's Remedies, a
12 Domestic Corporation,

13 Petitioner.

14 vs.

15 Department of Health and Human Services,
16 Nevada Division of Public and Behavioral
17 Health, Medical Marijuana Establishment
18 Program,

19 Respondent(s).

CASE NO. A-14-710874-J
DEPT NO. VIII

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

20 Respondent, STATE OF NEVADA and the DEPARTMENT OF HEALTH AND HUMAN
21 SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH'S (hereinafter "Division")
22 having filed a Motion To Dismiss Petitioner's Petition for Judicial Review pursuant to Nevada Rules
23 of Civil Procedure ("NRCP") 12(B), and the matter having come before the Court for oral argument
24 on January 27, 2015, Kimberly Maxson-Rushton of the law firm Cooper Levenson P.A. appearing
25 on behalf of Petitioner SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES, ("Samantha
26 Remedies") and Chief Deputy Attorney General, Linda Anderson appearing on behalf of
27 Respondent, the Court finds as follows:

28 THAT Petitioner filed a Petition for Judicial Review of an administrative decision denying
its application for a medical marijuana establishment registration certificate.

THAT Petitioner seeks review of the application review and ranking process, claiming the

1 administrative denial, which allows no opportunity for a hearing, was arbitrary and capricious rather
2 than fair and impartial.

3 THAT Respondent's motion seeking dismissal of the petition is based on the claim that
4 administrative decisions like this one are not subject to judicial review because judicial review is
5 reserved for contested cases, cases in which legal rights, duties, or privileges are determined after an
6 opportunity for a hearing. Furthermore, Respondent asserts that registration certificates for medical
7 marijuana establishments involve revocable privileges, not legal rights, for which no opportunity for
8 hearing has been established, and therefore judicial review is not available.

10 THEREFORE having heard arguments from both parties, and after reviewing the record, the
11 Court finds that judicial review must be available for this administrative decision.

12 THEREFORE, the COURT ORDERS, Respondent's Motion to Dismiss is hereby DENIED.
13 The parties may proceed with the Petition for Judicial Review.

15 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is DENIED.

16 DATED this 11 day of February 2015.

18
19
20 
DISTRICT COURT JUDGE *ll*

21 Submitted By:

22 COOPER LEVENSON, P.A.

23 
KIMBERLY MAXSON-RUSHTON

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CLERK OF THE COURT

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7 DISTRICT COURT
CLARK COUNTY, NEVADA
8

9 SAMANTHA INC. d/b/a SAMANTHA'S
REMEDIES, a domestic corporation,)
10)
Petitioner,)
11)

12 vs.)

Case No. A-14-710874
Dept. No. VIII

13 DEPARTMENT OF HEALTH AND HUMAN
SERVICES, DIVISION OF PUBLIC AND
14 BEHAVIORAL HEALTH, MEDICAL
MARIJUANA ESTABLISHMENT PROGRAM)
15)

Respondent.)
16)

17 ORDER

18 THIS MATTER came before the Court on February 23, 2016 on a status check after the Nevada
19 Supreme Court gave Notice in Lieu of Remittitur on February 16, 2016. Petitioner SAMANTHA INC.
20 doing business as SAMANTHA'S REMEDIES was represented by KIMBERLY MAXSON-
21 RUSHTON, ESQ. The DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF
22 PUBLIC AND BEHAVIORAL HEALTH (hereinafter "the Division") was represented by ADAM
23 PAUL LAXALT, Attorney General, by LINDA C. ANDERSON, Chief Deputy Attorney General.

24 Counsel for Samantha's Remedies argued that pursuant to NRS 233B.131 the Division must
25 transmit to the Court the original or a certified copy of the entire record of the proceeding under review,
26 including a transcript of the evidence resulting in the final decision of the agency. Petitioner further
27 requested that the Court order the Division to include as part of the record all papers, documents and
28 scoring instruments used to review and Samantha's Remedies' application; all internal memorandums

1 pertaining to the review and scoring process applicable to medical marijuana establishment (MME)
2 dispensary applications; and a list of all individuals responsible for reviewing, sorting, scoring and
3 recording the information used to determine the applicable score assigned to the Samantha's Remedies'
4 application.

5 Counsel for the Division directed the Court's attention to § 34 of Senate Bill 447 (2015 Nevada
6 Legislature) which amended NRS 453A.700 to allow the Division to disclose a medical marijuana
7 application with either prior written consent of the applicant or pursuant to a lawful court order after
8 timely notice of the proceedings has been given to the applicant. In response, counsel for Samantha's
9 Remedies requested that the Court issue an order, instead of Samantha's Remedies providing written
10 consent for the disclosure of the application, as the record on review should contain more information
11 than just the Petitioner's application. Counsel for the Division argued that the Legislature did not
12 provide for the disclosure of the tool used by the Division to evaluate an applicant even with a court
13 order or written consent. Counsel for the Division further stated that disclosure of said tool would
14 render it useless for any other competitive application periods because it would give an unfair advantage
15 to anyone who has access to it. Counsel for the Division proposed that the contents of the tool which
16 includes all notes of the Division during the evaluation of the application of Samantha's Remedies be
17 provided only to the Court for in camera inspection.

18 IT IS HEREBY ORDERED that the stayed issued in this matter is lifted and the parties will
19 proceed with the Petition for Judicial Review.

20 IT IS FURTHER ORDERED that the Division of Public and Behavioral Health file any and all
21 pertinent documents related to the application of Samantha's Remedies with the Court within 30 days of
22 the Notice in Lieu of Remittitur issued by the Nevada Supreme Court.

23 IT IS FINALLY ORDERED that the Division of Public and Behavioral Health provide a copy
24 of the contents of the tool used by the Division to evaluate Samantha's Remedies application (which

25 ///

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1 includes the Division's notes, scoring sheets including revisions, and the names of individual
2 responsible for scoring) to the Court for in camera inspection within the same 30-day period as
3 enumerated herein.

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5 DATED: March 9, 2016


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DISTRICT COURT JUDGE

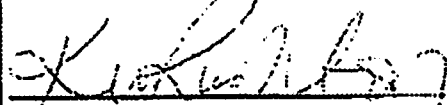
Submitted by:

ADAM PAUL LAXALT
Attorney General

By:


Linda C. Anderson
Chief Deputy Attorney General

Approved as to form-but not content:



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A-14-710874-J

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Nevada State Agency Appeal COURT MINUTES

March 29, 2016

A-14-710874-J Samantha Inc, Petitioner(s)
vs.
Department of Health and Human Services , Respondent(s)

March 29, 2016 8:00 AM Decision

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

PARTIES

PRESENT: Anderson, Linda Christine Attorney for Respondent
 Rushton, Kimberly Maxson Attorney for Petitioner

JOURNAL ENTRIES

- The Court thanked counsel for their submissions and advised that he is still of the opinion that there has to be an appellate review; based on that, COURT ORDERED the documents to be produced. Ms. Rushton is to prepare an Order.

Regarding the tool, Ms. Anderson stated that in another courtroom, Judge Cory removed one dispensaries, however he did not move anybody up; that it was Judge Cory's position that the application period would be reopened. Furthermore, Ms. Anderson believed that the decision would be appealed, however it puts her client in an untenable situation: if Samantha Remedies receives that tool, her client will have to either delay the application period until they develop a new tool or disqualify Samantha Remedies because they will have the application answers.

Ms. Rushton clarified that while Judge Johnson moved a party up, Judge Cory did not; that this is an application process that deals with medicine and patients and should not be done under the cloak of secrecy; and that it should be made public so the process is fair. The Court reiterated that there has to be an appellate review of a Government administrative function because if there is not, then the appearance is that it is not fair. Ms. Rushton stated that with the Petition for Judicial Review and the time schedule set forth under 233(b), that they would be seeking from the Court a determination based on the briefing specifically that they did not follow the statutory criteria; that the decision was made within a thirteen (13) day period; and believed that the Court has the authority to have the matter go back for re-review or to assign the necessary points to the application which would necessarily put her client in a position to be licensed.


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

10 Samantha Inc., d/b/a Samantha's Remedies,
11 a Domestic Corporation,

12 Petitioner.

13 vs.

14 Department of Health and Human Services
15 Nevada Division of Public and Behavioral
16 Health Medical Marijuana Establishment
17 Program,

18 Respondent(s).

CASE NO. A-14-710874-J
DEPT. NO. VIII

PETITION FOR JUDICIAL
REVIEW MEMORANDUM OF
POINTS AND AUTHORITIES

17 COMES NOW, Petitioner, SAMANTHA, INC. d/b/a SAMANTHA'S
18 REMEDIES ("Samantha's") by and through its attorneys, KIMBERLY MAXSON-
19 RUSHTON, ESQ., of the law firm COOPER LEVENSON P.A., and hereby submits its
20 Petition for Judicial Review, Memorandum of Points and Authorities, of the final
21 decision of Nevada's Department of Health and Human Services, Division of Public
22 and Behavioral Health, Medical Marijuana Establishment Program ("Division") on
23 November 18, 2014.

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1 This Memorandum of Points and Authorities is filed pursuant to the dictates of
2 Nevada Revised Statutes ("NRS") 233B.130, the papers and pleadings on file herein,
3 and the Points and Authorities attached hereto. Additionally, Petitioner respectfully
4 requests that oral arguments be heard on this matter.
5

6 Dated this 6th day of May, 2016.
7

8 Respectfully submitted,
9

10 COOPER LEVENSON, P.A.
11

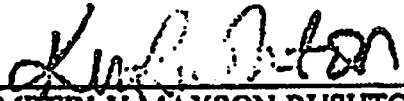
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I.

STATEMENT OF THE ISSUES

Petitioner asserts that the Division's final decision to deny Samantha's a Provisional Certificate of Registration to operate a Medical Marijuana Establishment ("MME") – Dispensary has prejudiced their rights and as such the actions were in direct violation of statutory provisions governing medical marijuana. *See*, NRS 453A.320, 453A.322, 453A.350 and 453A.362. Furthermore, the Division's scoring and ranking of Samantha's MME – Dispensary Application was arbitrary and capricious or otherwise best characterized as an "abuse of discretion." *See*, NRS 233B.135(3)(f). Specifically, had Samantha's Application been properly scored, based on the materials Petitioner submitted, Samantha's would have ranked within the top twelve (12) dispensaries in Las Vegas and been issued a Provisional Certificate of Registration to operate a MME – Dispensary in Las Vegas, Nevada.

II.

STATEMENT OF THE CASE

Immediately after Samantha's filed its Petition for Judicial Review, the Division filed a Motion to Dismiss, which was denied by this Court. Thereafter, on February 18, 2015, the Division filed a Petition for Writ of Mandamus or in the Alternative Prohibition in the Nevada Supreme Court. Oral arguments before the Nevada Supreme Court were held on October 6, 2015, and on January 22, 2016, the Supreme Court denied the Division's Petition, and the subject Petition for Judicial Review was remanded to this Court; thereby, allowing this Petition to proceed.

Accordingly, this lengthy review process resulted in the delayed filing of this Memorandum of Points and Authorities. Although this Honorable Court is well aware of the procedural history of this case and the basis of the present Petition, for purposes of ensuring a complete record a timeline of the proceedings in this matter is set forth below.

1 On May 30, 2014, the Division noticed a Request for Applications—which set
2 forth the dates and details of the application process for prospective MME applicants.
3 Pursuant to the Notice, between August 5, 2014, and August 18, 2014, the Division
4 would open a “10 Day Window for Receipt of Applications.” Thereafter, the Notice
5 stated that applications would be reviewed and scored during a 90-day period. Once all
6 applications were evaluated, they would be ranked, and the Division would issue
7 Provisional Certificates of Registration to the top-ranked dispensaries, based on
8 jurisdictional maximums for each local jurisdiction. *See*, NRS 453A.324. Consistent
9 with the statutory guidelines, only twelve (12) MME dispensary applicants were
10 authorized to operate in the City of Las Vegas. *Id.*

11 Samantha’s Application was timely filed – Samantha’s was the third MME-
12 Dispensary application filed in Nevada – and evaluated pursuant to the Division’s
13 Notice. On or about November 3, 2014, Samantha’s was notified that it would not be
14 granted a Provisional Certificate of Registration to operate a MME-Dispensary as it did
15 not score high enough to be ranked within the top twelve (12) applicants in the City of
16 Las Vegas.

17 After multiple verbal and written requests by Samantha’s to obtain the score of
18 its application as well as the methodology utilized by the Division, Samantha’s was
19 ultimately authorized to see a breakdown of the score as it pertained to each “scoring”
20 section criterion of the application, without any additional explanation for the
21 respective scores.

22 Noting that several of the evaluators scores were inconsistent and/or confusing
23 based on the information/documentation submitted in its Application, Samantha’s
24 requested that the Division reconsider the Application and award additional points
25 where necessary. On November 18, 2014, the Division notified Samantha’s that there
26 would be no further consideration of the Application, thus making the administrative
27 agency’s decision final.

28

1 Absent relief from this court, Samantha's will be prejudiced by the inability to
2 operate a MME-Dispensary, despite *clear evidence* that its Application was improperly
3 scored. As will be set forth more fully herein, the Division's actions: violated key
4 statutory provisions contained within NRS 453A; were done absent statutory authority;
5 and, were made upon unlawful procedure, the result of which was an arbitrary and
6 capricious handling of Samantha's Application. *See*, NRS 233B.135. Administrative
7 actions such as this amount to an abuse of the discretion by the Division in how it has
8 handled MME Applications in Nevada.

9 **III.**

10 **STATEMENT OF THE FACTS**

11 Samantha's refers this Court to the above paragraphs for the procedural facts of
12 this appeal, including an explanation of the MME application process. This Section,
13 therefore, will highlight the specific facts showing that Samantha's Application was
14 erroneously evaluated and scored, thereby justifying why this Honorable Court should
15 independently review and score Samantha's Application.

16 The Nevada MME application was divided into two (2) sections, the Identified
17 Criteria Response and the Non-Identified Criteria Response. (ROR pgs. 575-576).
18 Each section requested specific information and documentation demonstrating the
19 applicant's ability to meet the statutory and regulatory standards necessary to own and
20 operate a MME in Nevada. *See*, NRS 453A.322, NRS 453A.350. Samantha's
21 Application contained both the Identified and Non-Identified sections. The Identified
22 Criteria Response materials are included in the Record on Review at pages 1 – 577.

23 Strangely, the Record on Review does not contain Samantha's Non-Identified
24 Criteria Response ("NICR") documents, even though there is indisputable evidence that
25 these materials were received by the Division with Samantha's Application. (ROR pgs.
26
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1 576-577).¹ Perhaps more important than the absence of the NICR materials from the
2 Record on Review are the comments and scores of the Division's evaluators which
3 suggest that they were not provided with the NICR documents. Without question, these
4 documents were critical in determining Samantha's fitness and ability to operate a
5 MME-Dispensary pursuant to NRS 453A and Nevada Administrative Code ("NAC")
6 453A.

7 Pursuant to NRS 233B.131(1), the Division must provide "the entire record of
8 the proceeding under review." The fact that the NICR pages from Samantha's
9 Application were missing from the Record on Review shows that the Division's
10 evaluators did not have access to Samantha's full Application, and that the Division
11 was negligent in compiling the Record on Review for these proceedings. Accordingly,
12 throughout this Memorandum, Petitioner will make reference to specific pages from its
13 NICR materials even though said pages are as of yet missing from the Record on
14 Review.²

15 Additionally, Samantha's included a package of large, blueprint-size drawings,
16 plans, and photographs to the Division as part of its Application. These materials show
17 images of the exterior of the building Samantha's intended to use as its MME-
18 Dispensary, and include plans for the interior of the building, proposed signage,
19 security information, and other valuable evidence regarding the proposed operation.
20 These materials are also not included in the Record on Review provided by the
21 Division. For ease of reference, these materials will be cited as "NICR Drawings".
22

23
24 ¹Please see pg. 576 of the Application Evaluation – Evaluator's Guidelines – Administrative Review, which affirms that the materials were received by the Division.

25 ² Just as the pages of Samantha's Identified Criteria Response were labeled numerically in the
26 center-bottom of each page (ROR pgs. 1-577), the pages of Samantha's Non-Identified Criteria
27 Response were likewise numbered, starting with 1. Thus, references to the Identified Criteria
28 Response from the application will be cited as (ROR pgs. 1-577) and references to the NICR will
be cited with the corresponding page number (e.g. NICR 9).

1 The TOOL produced by the Division shows that MME applications were
2 reviewed and scored based on a table/rubric containing seven (7) scoring criteria. Each
3 of these seven (7) criteria were reviewed by three (3) evaluators, who assigned points in
4 each category pursuant to the guidelines found in the TOOL. After each evaluator
5 reviewed an application based on the criteria, the evaluators collectively discussed the
6 scoring criteria, their scores, and in most instances revised their scores. After these
7 modifications, if any, the evaluators would average their scores for the subject scoring
8 criteria, and the average was used as the final score for that specific criterion.

9 Set forth below are the seven (7) scoring criteria used to score and rank all MME
10 applications. Included in each of these scoring criteria are the points assigned to
11 Samantha's Application as well as relevant comments from the evaluators – where
12 available – to justify their scores.

13 Samantha's argument in this Petition for Judicial Review is straight forward – the
14 scores and comments found in the TOOL clearly show that the Division did not
15 correctly score Samantha's Application, which is likely due to the fact that none of the
16 evaluators properly reviewed Samantha's Non-Identified Criteria Response materials.

17 **1. ADEQUACY OF SIZE – BUILDING AND CONSTRUCTION PLANS**

18 (TOOL0002)

19 In this criterion, Samantha was given a score of 7.3 out of 20 possible points.
20 (TOOL0001). As justification for this score, the TOOL includes the following
21 comments:

22 "To [sic] many entrances & exits." (TOOL0002). (However, another evaluator
23 stated a "single public entrance [is] noted." (TOOL0008.)

24 "If the building already exists, there needs to be an indication of security and
25 surveillance." (TOOL0007).

26 "A building plan to implement basic security is missing." *Id.*

27 "Very little in the way of plans to make the plans happen. " *Id.*

28 "No mention of Interior or Exterior appearance." (TOOL0008).

1 "No mention of signage." *Id.*

2 2. **LIKELY IMPACT ON THE COMMUNITY** (TOOL0017)

3 In this criterion, Samantha's was given a score of 6.3 out of 20 possible points.
4 (TOOL0001). As justification for this score, the TOOL includes the following
5 comments:

6 "No mention of improving quality of life, sustainability, security measures mod
7 to [sic] weak with bars and deadbolts." (TOOL0017).

8 "Little demonstration of commitment to the community." (TOOL0021).

9 "No big community involvement." *Id.*

10 3. **TAXES PAID and FINANCIAL CONTRIBUTIONS** (TOOL0028)

11 In this criterion, Samantha's was given a score of 11.6 out of 25 possible points.

12 4. **CONVENIENT TO SERVE THE NEEDS** (TOOL0037)

13 In this criterion, Samantha's was given a score of 16 out of 20 possible points.

14 5. **ORGANIZATIONAL STRUCTURE** (TOOL0047)

15 In this criterion, Samantha's was given a score of 30.4 out of 50 possible points.
16 The consistent comment from the evaluators was that there was a lack of detail in
17 Samantha's organizational chart. (TOOL0048, 0050, 0054). Aside from these
18 comments Samantha's scores were largely scored without meaningful comment from
19 any of the three (3) Division evaluators.

20 6. **CARE, QUALITY AND SAFEKEEPING** (TOOL0058)

21 In this criterion, Samantha's was given a score of 59.33 out of 75 possible points.

22 7. **FINANCIAL RESOURCES** (TOOL0113)

23 In this criterion, Samantha's was given a score of 32.33 out of 40 possible
24 points. As justification for this score, the TOOL includes the following comment:

25 "Shows P&L for all companies but does not show budget for start-up or
26 operational. NO proof of funds guaranteed." (TOOL0120).

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IV.

ARGUMENT

A. INTRODUCTION

This Petition is premised on the grounds that the Division's review and ranking of Samantha's Application, which resulted in the denial of a MME-Dispensary Certificate of Registration, was in clear conflict with NRS 233B.135. Specifically, Petitioner asserts that it has been prejudiced by the Division's final decision because it is:

- (a) In violation of statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- (f) Arbitrary or capricious or characterized by abuse of discretion.

See, NRS 233B.135(3)(a-f).

There is undisputable evidence that the Division did not properly review and score the subject Application thereby resulting in Samantha's not ranking high enough to be granted a Provisional Certificate of Registration to operate a MME-Dispensary in the City of Las Vegas. Accordingly, Samantha's respectfully requests that this Honorable Court correct the clear errors made by the Division and order the state to assign the proper ranking to Samantha's Application.

Even though the application format was divided into two (2) sections (Identified Criteria and Non-Identified Criteria, as discussed above), the methodology used for reviewing and scoring the applications (TOOL0001-0123) as well as the scoring details were organized into sections based on seven (7) merit criteria identified by the Division. The specific sections and corresponding points were as follows:

- | | |
|---|-------------|
| 1- Adequacy of Size – Building and Construction Plans | (20 Points) |
| 2- Likely Impact on the Community | (20 Points) |
| 3- Taxes Paid and Financial Contributions | (25 Points) |
| 4- Convenient to Serve the Needs | (20 Points) |
| 5- Organizational Structure | (50 Points) |
| 6- Care, Quality and Safekeeping | (75 Points) |
| 7- Financial Resources | (40 Points) |

1 Following receipt of a letter from the Division indicating that Samantha's
2 Application had not scored high enough to be issued one of twelve (12) Provisional
3 Certificates of Registration, Samantha's requested to see a copy of their Application
4 and information pertaining to the scoring details. In response, Petitioner was provided
5 with a breakdown of the scores per section (as identified above) and the overall ranking
6 of MME-Dispensary applications within the City of Las Vegas. (ROR pg. 573).

7 Specifically, Samantha's scores were as follows:

8 1- Adequacy of Size - Building and Construction Plans:	7.3	/ 20
9 2- Likely Impact on the Community:	6.3	/ 20
10 3- Taxes Paid and Financial Contributions:	11.6	/ 25
11 4- Convenient to Serve the Needs:	16	/ 20
12 5- Organizational Structure:	30.4	/ 50
13 6- Care, Quality and Safekeeping:	59.33	/ 75
14 7- Financial Resources:	32.33	/ 40
15 TOTAL	163.26	/ 250

16 As the evidence and arguments contained herein will show the Division violated
17 Samantha's substantial right to a fair and adequate review of its Application thereby
18 prejudicing it from the ability to operate a MME-Dispensary in the City of Las Vegas.
19 See, NRS 233B.135.

20 **B. STANDARD OF REVIEW**

21 In reviewing an administrative agency's decision, a court "shall not substitute its
22 judgment for that of an agency in regard to a question of fact. The standard for such
23 review is whether the agency's decision was clearly erroneous or an arbitrary abuse of
24 discretion." Riverboat Hotel Casino v. Harold's Club, 113 Nev. 1025, 1029 (1997). A
25 reviewing court has complete discretion to "reverse an agency decision that is clearly
26 erroneous in light of reliable, probative, and substantial evidence on the whole record."
27 United Exposition Serv. Co. v. State Indus. Ins. System. 109 Nev. 421, 425 (Nev.
28 1993).

When an administrative decision raises questions of law a court should review de
novo (See, Riverboat Hotel Casino 113 Nev. at 1029; Collett Elec. v. Dubovik, 112

1 Nev. 193, 196 (1996)) and set aside an administrative agency's decision if, due to legal
2 error, said decision has prejudiced a party's substantial rights. *See*, NRS 233B.135(3);
3 Mishler v. State Bd. of Medical Examiners, 109 Nev. 287, 292 (1993); *See also*,
4 Chappaz v. Golden Nugget, 107 Nev. 938, 941 (1991).

5 Another factor a reviewing court must consider in its deliberations is whether an
6 administrative agency's action/decision was consistent with the law or if the
7 administrative decision failed to meet statutory, procedural, or constitutional
8 requirements and, as a result, should be set aside. Nevada Land Action Ass'n v. United
9 States Forest Serv., 8 F.3d 713, 716 (1993).

10 Finally, a reviewing court must determine whether the decision was based on
11 substantial evidence, which "a reasonable mind might accept as adequate to support a
12 conclusion." The "substantial evidence" standard does not include reviewing the
13 evidence to determine if a burden of proof standard was met or a whether a view was
14 supported by a preponderance of evidence but rather the standard "equates" to a review
15 of the quantity and quality of evidence relied upon to support the agency's conclusion.
16 State Employment Sec. Dep't. v. Hilton Hotels Corp., 102 Nev. 606, 608 (1986) citing,
17 Robertson Transp. Co. v. P.S.C., 159 N.W.2d 636, 638 (1968). If upon review of the
18 whole record an agency's "findings, inferences, conclusions or decisions" are clearly
19 erroneous to the point of prejudicing a petitioner a reviewing court may reverse the
20 agency's action. Apeceche v. White Pine County, 96 Nev. 723, 725 (1980).

21 C. Samantha's should have received additional points for the
22 "ADEQUACY OF SIZE – BUILDING AND CONSTRUCTION
23 PLANS" criterion.

24 In this criterion, Samantha's was given a score of 7.3 out of 20 possible points.
25 (TOOL0001). The comments from the three (3) evaluators make it clear that one of
26 two things happened: either the Division employees were careless in reviewing
27 Samantha's Application, resulting in errors and omissions in scoring, or the Division's
28 evaluators did not have access to all of Samantha's Application materials – specifically,

1 the NICR materials – which lead to errors and omissions in scoring. Either way, the
2 end result is that Samantha's Application was not correctly scored. Accordingly, this
3 Court should exercise its clear judicial authority and set aside the Division's decision as
4 being "arbitrary, capricious, and characterized by an abuse of discretion." *See*, NRS
5 233B.135(3)(f); Nevada Land Action Ass'n 8 F.3d at 716.

6 Further substantiation of the Division's arbitrary and capricious actions can be
7 found in a review of the evaluators' comments in the criteria section of the TOOL.
8 These comments show numerous errors on behalf of the Division which ultimately
9 resulted in a poor score for Samantha's Application in this criterion. The applicable
10 comments are set forth below, with Samantha's responses showing the evaluators'
11 errors following each comment.

12 - "To [sic] many entrances & exits" (TOOL0002)

13 Consistent with the Application submitted by Samantha's, the proposed MME-
14 Dispensary site is an existing financing and retail business operating out of a former
15 bank building owned by Petitioners Erminia and Bill Drobkin. It is a 6,000 square foot
16 building with the following points of ingress and egress: one (1) customer entrance-
17 only doorway, one (1) customer exit-only doorway, one (1) product delivery and
18 employee entrance and exit doorway, one (1) emergency-only exit, and one (1) entrance
19 to a mechanical room which, as indicated in the Application, would not be used, and
20 would be dead bolted from the inside of the building. These doors are clearly shown on
21 the large blueprint-size drawings provided by Samantha's to the Division (NICR
22 Drawings) and are further described (in detail) throughout Samantha's Application.
23 (NICR 9). The Record on Review does not include any of these materials, nor is there
24 any evidence in the TOOL that the evaluators reviewed and/or understood the
25 architectural blueprints submitted with the Application.

26 The Application demonstrates that there are not "too many entrances and exits"
27 as one evaluator suggested. Consistent with NRS 453A.352(2)(a) a MME-Dispensary
28 "must have a single entrance for patrons, which must be secure." Samantha's location

1 meets the statutory criteria in that it has one (1) door used for public ingress and a
2 separate door for public egress, one (1) for employees and delivery of product, and one
3 (1) emergency exit. Interestingly, a second evaluator mentioned that a "single public
4 entrance [is] noted." (TOOL0008). Furthermore, because the proposed MME-
5 Dispensary site is currently operational, Samantha's must maintain a specific number of
6 entrances/exits based on City and fire code requirements for a building of the subject
7 size. (See, International Building Code §1015 - City of Las Vegas).

- 8 - "If the building already exists, there needs to be an indication of security and
9 surveillance." "A building plan to implement basic security is missing."
10 (TOOL0007).

11 Samantha's Application materials included numerous references to security
12 measures currently in place based on the fact that the building was previously used as a
13 bank. The building already utilizes an alarm system with motion and perimeter alarms
14 as well as an active camera system with all cameras monitored externally. The
15 Application also contained information about the *additional security measures* which
16 would be implemented by Samantha's in order to operate as a MME-Dispensary.
17 These measures include adding rolling aluminum shutters over glass windows and glass
18 doors and additional exterior security. (NICR 9-10).

19 Frankly, it is hard to imagine a building that would be better suited to safely and
20 securely operate as a MME-Dispensary than a former bank building. NAC 453A is
21 replete with references to the heightened standards of security and the corresponding
22 obligation to maintain patient information and marijuana products in a secure area. As
23 stated in its Application, Samantha's intended to utilize the vault to maintain money
24 and patient records, and to ensure that the products were kept away from everyone
25 except those authorized to handle and receive medical marijuana products. (NICR
26 Drawings).

- 27 - "Very little in the way of plans to make the plans happen"(TOOL0007)

28 The large drawings submitted by Samantha's show multiple aerial images of the

1 exterior of Samantha's building in its current state – fully built and operational. (NICR
2 Drawings). Yet, one evaluator commented that Samantha's Application lacked "plans"
3 to show what changes would be made if approved to operate a MME-Dispensary.
4 Absent a review, or an understanding, of the blueprints showing the proposed interior
5 changes there is no logical explanation for the evaluator's comment and low score;
6 instead it is clear that Samantha's Application contained information and
7 documentation substantiating its plans for how to convert the existing bank building
8 into a thriving and secure MME-Dispensary.

9 - "No mention of Interior or Exterior appearance." "No mention of signage."
10 (TOOL0008)

11 The above mentioned statements make it clear that the evaluators were not
12 provided with the large, blueprint-size drawings and aerial photographs of the subject
13 building. These drawings show multiple images of the outside of the building
14 including the proposed signage for the business. Similar to the argument set forth
15 above in the preceding paragraph, it is evident that this evaluator also did not have
16 access to – or perhaps failed to review – the architectural renderings of the interior of
17 the building. (NICR Drawings). There cannot be a more clear indictment of the
18 Division's abuse of discretion than the evaluators comments, which are directly
19 contradicted by the large, colorful drawings provided to the Division as part of
20 Samantha's Application.

21 While the (Division's) mistakes may be attributed to one or two evaluators
22 erroneously not reviewing all of the documentation and drawings provided by
23 Petitioner, other errors are likely the result of the hasty manner in which Samantha's
24 Application was handled. Some of the Division's evaluators spent very little time in
25 reviewing this section – and other sections – of the Application. For example, one of
26 the Division's evaluators spent only seven (7) minutes scoring the respective sections
27 of Samantha's Application pertaining to this criterion. (TOOL0011). It seems unlikely
28 that in seven (7) minutes the evaluator was able to review all of the applicable

1 information to determine whether the building met, or exceeded, the criterion. Frankly,
2 with so little time spent on the Application it is no wonder why there are numerous
3 errors with the Division's scoring of this Application, all to the detriment of Petitioner.

4 As noted, Samantha's was only given 7.3 points out of 20 possible points in this
5 section. The comments above show that Samantha's score was not based on substantial
6 evidence and, in certain instances, the score is reflective of legal error and the failure to
7 award points based on a clear misinterpretation and application of specific sections of
8 NRS and NAC 453A. It's clear that information and documentation contained in
9 Samantha's Application was either not reviewed or reviewed in such an expedited
10 manner as to be meaningless. Accordingly, Samantha's requests that their score for this
11 criterion be modified to accurately reflect the following evidence: (i) a building which
12 already exists, is properly zoned and currently compliant with all City Building and
13 Fire Safety standards; (ii) a building that is well suited to operate safely and securely as
14 a MME-Dispensary; (iii) a building which, based on the information in the Application,
15 will be further improved to add additional security measures consistent with
16 requirements contained in the NRS/NAC 453A.

17
18 **D. Samantha's should have received additional points for the "LIKELY**
19 **IMPACT ON THE COMMUNITY" criterion.**

20 In this criterion, Samantha's was given a score of 6.3 out of 20 possible points.
21 (TOOL0001). There were two sections to this criterion, each section carrying a total of
22 10 possible points. (TOOL0017). In the first section, the "Merit Criteria" (*Id.*) cites to
23 NAC 453A.328(6) and defines the criteria as follows: "The likely impact of the
24 proposed medical marijuana establishment on the community in which it is proposed to
25 be located." The TOOL instructs the evaluators that an excellent response would
26 include information demonstrating how the applicant establishment will benefit the
27 community, mitigate negative impacts, including safety, and have a continuing positive
28 impact on the quality of life of neighbors. (TOOL0017). The comments of the

1 evaluators are spurious, and further evidence the Division's arbitrary and capricious
2 actions in reviewing and scoring Petitioner's Application.

3 - "No mention of improving quality of life, sustainability, security measures mod
4 (sic) to weak with bars and deadbolts." (TOOL0017).

5 Samantha's Application contained substantial information on its proposed
6 security measures, including but not limited to, internal and external security, constant
7 camera surveillance, an advanced alarm system, emergency preparedness and
8 responsiveness, and outreach with local law enforcement and community leaders to
9 ensure neighbors are not negatively impacted by the operation of a MME-Dispensary in
10 their neighborhood. (NICR 17-25). Additionally, the Application indicated that
11 because Petitioners currently operate at the proposed location, they are familiar with the
12 surrounding businesses and business owners and they maintain a regular dialogue with
13 said businesses. By doing so, it provides patients (and the state) the assurance that
14 incidents of loitering and/or criminal behavior do not occur in and around the
15 dispensary.

16 - "Little demonstration of commitment to the community." "No big community
17 involvement." (TOOL0021)

18 Even though Samantha's Application clearly showed a commitment to the
19 community through development and implantation of safety processes and procedures,
20 outreach with law enforcement and neighbors, and increased foot traffic to neighboring
21 business, this specific evaluator initially awarded Petitioner four (4) points then revised
22 the score to two (2) points with no explanation other than an asterisk next to the words
23 "No mention of potential safety hazard." (TOOL0020). Samantha's Application is
24 replete with information about Samantha's safety and security measures. While it's
25 unclear what the evaluator's comment pertained to exactly, a logical conclusion would
26 be that it was referring to either building safety measures or the handling and disposal
27 of hazardous waste. The former having been previously addressed; as it relates to
28 hazardous waste, it should be noted that unlike other MME disciplines – such as

1 cultivation, production, and independent testing labs – MME dispensaries have little if
2 any hazardous waste safety concerns. However, Samantha's did provide specific
3 information in the Application that indicated how it would dispose of marijuana
4 products not otherwise sold to patients.

5 Also contained within Samantha's Application is detailed information about the
6 Petitioners commitment to the community. Even a cursory review of the Petitioners
7 résumés evidences their long-time commitment to the Las Vegas community through
8 their involvement in professional and business associations, as well as their extensive
9 work with the Ronald McDonald House where their daughter, Samantha, spent a
10 significant amount of time during her battle against brain cancer. (ROR pgs. 431-437).
11 Therefore, if the evaluators had reviewed the information/documentation contained
12 within Samantha's Application the points would have so reflected. There was
13 absolutely NO basis for the low points originally assigned to this section of the
14 Application nor is there support for the revised score. (TOOL0020-0021).

15 Equally noteworthy is the fact that one evaluator had no comments/substantiation
16 for the points awarded to this section of the criterion. (TOOL0024). Further
17 demonstrating the arbitrariness of the review and scoring of Samantha's Application.

18 The "Evaluation Elements" for the second section of this criterion required an
19 applicant to show that "[t]he establishment will meet the needs of the person authorized
20 to engage in the medical use of marijuana in the following ways:

- 21 • Providing relevant and appropriate educational materials
- 22 • Educational materials regarding various strains of medical marijuana
- 23 • Fair and consistent costs for the authorized persons
- 24 • Selling strategies, which could include discounts for volume or combination of
25 product sales
- 26 • Low income sales strategy
- 27 • Demonstration of a community wellness program." (TOOL0018-0019).

1 Despite ample information detailing Samantha's ability to meet the needs of
2 patients, only one of the three evaluators provided comments in support of the score
3 given to Samantha's. Other than said comments there is no basis for how the points
4 were awarded (or not awarded) and then adjusted. (TOOL0001 and TOOL 0017-0025).
5 This failure equates to a lack of substantial evidence to support the Division's decision,
6 thereby confirming that this Honorable Court should find that the Division's actions
7 were both arbitrary and capricious and inconsistent with specific statutory provisions
8 governing the licensure of MME-Dispensaries. See, NRS 453A.322 and NRS
9 453A.328.

10 The one evaluator, which did add comment, recognized the educational materials
11 submitted by the Applicant and awarded close to the full points for this section. Yet,
12 within the same section the evaluator deducted points based on what can only be
13 construed as the evaluator's determination that Samantha's failed to meet the other
14 elements of the criteria relating to product sales and patient pricing.

15 In fact, Samantha's Application contained information pertaining to employee
16 training, the handling of medical marijuana, and assisting patients. (NICR 110-115). It
17 also contained educational and wellness materials which highlighted various strains of
18 marijuana, the interaction between cannabis and other homeopathic products, and
19 dosage sizes. (NICR 244-250). Based on the information submitted by Samantha's, the
20 three (3) points ultimately given to their Application cannot be substantiated by the
21 record and is, but another example of how the Division's actions in scoring Samantha's
22 Application were clearly arbitrary and capricious.

23 **E. "TAXES PAID AND FINANCIAL CONTRIBUTIONS" criterion.**

24 In this criterion, Samantha's was given a score of 11.6 out of 25 possible points.
25 According to the TOOL, points were assigned in this section based on a rubric where
26 the amount of taxes paid or money donated correlates to a certain point total.
27 (TOOL0028-0029). Clearly, one could argue that this criterion is not reasonable (or
28

1 constitutional) as it clearly favors the wealthiest applicants. Accordingly, Samantha's
2 asserts that even if the standards and criteria are accepted as fair and proper, and not
3 contrary to statutory and constitutional provisions, the Division's actions were arbitrary
4 and capricious in the way they were applied in evaluating and scoring the other sections
5 of Samantha's Application. See, NRS 233B.135(3)(f).

6 **F. "CONVENIENT TO SERVE THE NEEDS" criterion.**

7 In this criterion, Samantha's was given a score of 16 out of 20 possible points.
8 This criterion relates to the physical location/building of the proposed MME.
9 Samantha's received 5 out of 5 points from each evaluator based on its ownership of
10 the building coupled with the information it supplied indicating its intent to renovate
11 the facility in order to use it as an MME-Dispensary. Samantha's received an average
12 of 11 out of 15 points for the convenient features of the building, including parking,
13 lighting, and accessibility by public transportation. It appears that the evaluators based
14 their scores in this criterion on the pictures found in the (ROR pgs. 091 & 093), which
15 contain two (2) aerial photographs of the already-constructed building that would house
16 Samantha's MME-Dispensary. It is certainly possible that if the evaluators had
17 considered and reviewed the larger blueprint-size drawings and plans (NICR
18 Drawings), that additional points would have been awarded. Considering the
19 foregoing, and the absence of substantial comments, there is no way to determine
20 whether the Division had a substantial basis for the points awarded in this section.

21 **G. Samantha's should have received additional points for the**
22 **"ORGANIZATIONAL STRUCTURE" criterion.**

23 In this criterion, Samantha's was given a score of 30.4 out of 50 possible points.
24 The Merit Criteria for this criterion was based on NRS 453A.328 and focused primarily
25 on the ownership structure of the proposed MME-Dispensary and the owners'
26 background and experience in operating a business, their educational background and a
27 demonstration of experience and/or understanding of the compassionate use of
28

1 marijuana to treat medical conditions. Possible points were divided into four
2 categories:

- 3 1- Organization structure of the proposed MME-Dispensary: 0-10 points;
- 4 2- A narrative of each owner demonstrating their professional background and a
5 résumé: 0-20 points;
- 6 3- The owners' educational achievements: 0-5 points; and
- 7 4- Demonstrated knowledge or expertise with respect to the compassionate use of
8 marijuana for medicinal purposes: 0-15 points.

9 Samantha's is a family owned and operated business with control and oversight
10 mutually shared between Bill and Erminia Drobkin, two individuals who have over 34
11 years of owning and operating businesses in Nevada. The average score from the
12 evaluators was 2.3 out of 10 points for Samantha's organizational structure.
13 (TOOL0046). Said score was based on what the evaluators erroneously construed as a
14 lack of detail in the organizational chart. (TOOL0048, 0050, 0054). In fact, Samantha's
15 submitted two organizational charts – one showing the ownership structure (ROR pg.
16 401) and another describing the operational organizational structure. (NICR 110).
17 Within the operational structure, Samantha's included detailed descriptions of each
18 position, including the roles and responsibilities each would have to the organization as
19 well as to the patient. The chart further detailed the expected duties, skillset and
20 background requirements for each designated position within the operational structure.
21 (NICR 110-115). Ultimately, all decision making responsibilities and oversight would
22 reside with the owners.

23 The ownership and operational organizational structures were deemed to be
24 "inadequate" by the evaluators. In other words, the evaluators considered the
25 ownership structure too simple, despite the fact that the owners currently own and
26 operate four (4) other retail businesses and finance companies in Las Vegas. (ROR pgs.
27 431-437). Additionally, the Application defined the employee/consultant positions
28 within the organizational structure, and the applicability of each position to the

1 operation of a MME-Dispensary. (NICR 110-115). While this information was clearly
2 recognized in the second section of this criterion, wherein Samantha's received 15
3 points (out of 20) for its resume, demonstrating a lengthy and extensive background in
4 operating businesses in Nevada, it is obvious it was not recognized in the first section.
5 In response, Samantha's submits that the evaluator's actions were inconsistent with the
6 law, and the scoring process was nothing short of arbitrary and capricious. As
7 evidenced herein, in direct contrast to the Legislative intent behind NRS 453A.320, the
8 Division's review, scoring and ranking of MME applications failed to ensure that only
9 the most suitable applicants were authorized to dispense medical marijuana in Las
10 Vegas.

11 The third section of this criterion asked owner/applicant's to demonstrate their
12 educational achievements. Again, the inconsistencies in the evaluators' scores show a
13 clear subjective approach to otherwise objective factors. Both Applicants have higher
14 educational degrees in the area of business administration; yet, one evaluator awarded 3
15 points while the other two evaluators awarded 4 points. When the scoring range is 0-5
16 points, and the merit criteria specifically states that an excellent response is one that
17 shows academic achievement - it is implausible that only 3 points would be awarded by
18 an evaluator, or that the other evaluators awarded only 4 points due to the Applicant's
19 failure to include their graduation dates. Furthermore, the comments and corresponding
20 actions (*i.e.* awarding less than 5 points) prove that the Division performed absolutely
21 no independent investigation/verification of any information supplied by this
22 Applicant, and likely any other applicant applying for licensure during this initial
23 period. Instead, the Division relied on part-time, temporary employees who obviously
24 lacked any background, expertise or acumen in areas such as finance, business,
25 agriculture, or medicine.

26 The fourth section of this criterion pertained to the compassionate use of
27 marijuana for medicinal purposes. This section was completely subjective in that an
28 applicant was asked to submit a narrative demonstrating "knowledge or expertise" in

1 the compassionate use of marijuana. While Samantha's is privy to the "methodology"
2 used for scoring purposes – because the Division was required to produce the TOOL –
3 there were no details or specifics included in the application indicating what the
4 Division would be looking for or how this section of the application would be scored.
5 (TOOL0047-0055). As a result, like many individuals seeking to operate a MME, the
6 Petitioners included detailed information about their personal experience – the loss of
7 their daughter to brain cancer - and how, if legal, medical marijuana could have assisted
8 her with pain and the horrible side effects of cancer. (ROR pgs. 428-430). Moreover,
9 the Application detailed the experience and background of a marijuana consultant with
10 whom Samantha's had contracted with to provide expertise and assistance specific to
11 marijuana and its many medicinal uses. This information was contained in Samantha's
12 Application as part of its operations manual, which is also not included in the Record
13 on Review, but is mentioned in the Record on Review at pg. 577. Lastly, the
14 Application included information evidencing the research Samantha's had done in the
15 area of medical marijuana and the types of strains that would be offered to patients in
16 order to meet their medical needs. (NICR 110-115). In response, the evaluators deemed
17 the response to be "average" and awarded a score of 8.7 out of 15 points. Other than
18 statements indicating that Applicants had "no background" in dispensing marijuana,
19 there is no substantial evidence the Division can rely upon to support this score.

20 Collectively, Samantha's scored 30.4 points in this criterion, however, had
21 objective standards been used to analyze and score the applications, the score would
22 have been more consistent with the merit criteria/evaluation elements and the
23 corresponding information provided in Petitioner's Application. Instead, the scoring
24 reflects the otherwise infirm actions of the evaluators, and the Division in reviewing
25 and scoring the MME-Dispensary applications submitted in August 2014.

1 **H. "CARE, QUALITY AND SAFEKEEPING" criterion.**

2 In this criterion, Samantha's was given a score of 59.33 out of 75 possible points.
3 Unfortunately, the TOOL does not contain substantial commentary or elaboration from
4 the evaluators which could be used to better understand or criticize their point
5 allocations. Accordingly, the Record on Review provides insufficient support for the
6 basis of the points awarded or not awarded to Samantha's. While Samantha's cannot
7 point to specific portions of the Record on Review to dispute this score, Petitioner
8 submits that the Record on Review provides no substantial basis for the points awarded
9 or not awarded. This notable absence of evidence further shows the arbitrary and
10 capriciousness of the Division's actions in its ultimate decision to not issue Samantha's
11 a Provisional Certificate of Registration.

12 **I. Samantha's should have received additional points in the "FINANCIAL**
13 **RESOURCES" section.**

14 In this criterion, Samantha's was given a score of 32.33 out of 40 possible points.
15 This criterion required Applicants to submit financial information, including both liquid
16 and non-liquid assets. In large part the evaluators did not add comments to substantiate
17 the scores given to Samantha's, nor does the record contain a "Criteria 3 Person Team
18 Meeting" 0 scoring sheet showing the evaluators collective scores. However, included
19 in the Record on Review is a single page whereby one of the evaluators stated the
20 following:

- 21 - "Shows P&L for all companies but does not show budget for start-up or
22 operational. NO proof of funds guaranteed." (TOOL0120)

23 Yet again, said comment evidences the fact that the evaluator was either not
24 provided a critical part of Samantha's Application, or the evaluator did not review the
25 same. Included within the Application was both a 12-month proforma income
26 statement as well as a letter from Petitioner's bank indicating the availability of funds
27 sufficient to cover start-up costs. (ROR pg. 577).
28

1 **J. Relief Sought**

2 In reviewing a Petition for Judicial Review a court is not meant to stand in the
3 shoes of the subject government agency. This is typically a sound practice as the
4 agency and its employees are best suited to use their knowledge and expertise in the
5 subject area to render decision's in administrative matters. However, in this case, it is
6 clear that the Division improperly carried out its duties to enforce and uphold NRS and
7 NAC 453A, which might best be explained by the Division's internal process in
8 reviewing MME applications.

9 On March 31, 2014, the Division sent an email to the Medical Marijuana Listserv
10 stating that the division was "Recruiting for Permanent and Temporary Medical
11 Marijuana Positions." This email specified that the Division was looking to hire
12 individuals "on a temporary basis to assist with application process for the certification
13 of medical marijuana establishments." The advertisement seeks responses from a wide
14 range of applicants, including those with interests in any of the following areas:

15 Administrative assistant background, accounting, personnel
16 officers/human resources, business ownership, environmental
17 protection, pharmacist technician experience, fire and life safety, IT
18 professionals, supply technician background, inspection, purchasing,
19 public works background, and building construction/inspection
20 experience.

21 Ultimately, it was the respondents to this email who reviewed and evaluated the
22 applications of Samantha's and other MME's. As evidenced by the advertisement,
23 these individuals had no experience in evaluating MME's, nor was there any
24 requirement that the individual demonstrate a knowledge and/or understanding of the
25 applicable statutes and regulations. Since these individual evaluators do not appear to
26 possess any particular experience or expertise in the subject area they should not be
27 given any special deference relative to their evaluations. As such, Samantha's strongly
28 implores this Honorable Court to determine the proper scores for Samantha's in each of
the disputed criteria, above, and assign a score, accordingly.

1 If this Court is hesitant to engage in such actions Samantha's requests that its
2 Application be remanded to the Division, with specific instructions that additional
3 points be given in the specific areas as argued above – where there is clear and
4 irrefutable evidence that the Division and its employees did not properly evaluate
5 Samantha's Application, and specifically the "Non-Identified" materials referenced
6 herein.


7 **CONCLUSION**

8 Based on the foregoing arguments, Samantha's respectfully requests that this
9 Court score Petitioner's Application consistent with the contents of the Application,
10 which the Division either overlooked or did not consider. In the alternative,
11 Samantha's requests that this court remand Samantha's Application to the Division
12 with specific instructions that additional points should be assigned to Petitioner based
13 on the entirety of its Application.

14
15 DATED this 6th day of May, 2016.

16 Respectfully submitted,

17 COOPER LEVENSON, P.A.

18
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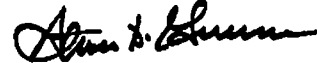
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CLERK OF THE COURT

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7 DISTRICT COURT
CLARK COUNTY, NEVADA
8

9 SAMANTHA INC. d/b/a SAMANTHA'S
REMEDIES, a domestic corporation)
10)
11)

Petitioner,)

Case No.: A-14-710874-J

12 vs.)
13)

Dept. No.: VIII

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

Respondent.)
16)

RESPONDENT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES

17 COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF
18 HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
19 (hereinafter "DIVISION"), by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy
20 Attorney General, LINDA C. ANDERSON, and files this Reply Memorandum of Points and
21 Authorities to the Petition for Judicial Review Memorandum of Points and Authorities filed by
22 Samantha Remedies. The Non-Identified Criteria Response (NICR) was filed with the Court on May
23 27, 2016, after inadvertently being left out of the Record on Appeal previously filed with the Court.

24 Dated: June 2, 2016

25 ADAM PAUL LAXALT
Attorney General

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

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ARGUMENT

I. DIVISION IS ENTITLED TO DEFERENCE

Petitioner SAMANTHA REMEDIES wants to challenge the decision of the Division because its application did not score in the top twelve dispensaries for the City of Las Vegas and argue that it should receive a registration instead of another applicant. As provided in Chapter 233B of the Nevada Revised Statutes, the decision of the Division in scoring and ranking applications for medical marijuana establishments is entitled to deference in this review. "The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact." NRS 233B.135(3). The assignment of a score was not a legal determination and instead the Division was required to make factual determinations in reviewing the applications. The Nevada Supreme Court has confirmed that

[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute.

City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) citations omitted. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court." NRS 233B.135(2). Therefore, Petitioner has the burden in challenging the decision to demonstrate that the scoring of the Division was invalid.

The Division had the statutory authority to issue certificates of registration for medical marijuana establishments pursuant to NRS 453A.322 in November of 2014. The Nevada Legislature specified that the Division could accept applications once a calendar year for a ten day period as described in NRS 453.324(4). The registration of dispensaries was a competitive process because Clark County was limited to forty (40) dispensaries with the Clark County Commission allocating twelve (12) to the City of Las Vegas pursuant to NRS 453A.324 and NRS 453A.326. The Division scored and ranked the applications according to the considerations set forth in NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process by the Division and issued registrations which were provisional by law during that prescribed time period.

///

1 The Division trained a team of contractors who evaluated all of the applications submitted
2 according to the criteria mandated by the Nevada Legislature and utilized a standardized scoring tool.
3 Those scores are a factual rather than a legal determination made by the agency as they compared
4 applicants to determine their ranking in each jurisdiction. If this Court scored SAMANTHA
5 REMEDIES only, the process would not be consistent because the Court could not replicate the review
6 that was done by the Division in considering all of the applications. Therefore, the Division requests
7 this Court to give the Division deference on the scores assigned after reviewing the overall process and
8 deny this petition for judicial review.

9 II. DIVISION WAS NOT ARBITRARY OR CAPRICIOUS

10 As outlined in the brief filed by the Petitioner and supported by the TOOL in the record, the
11 Division examined the applications with consideration of the following statutory "criteria of merit":

- 12 1. The total financial resources of the applicant, both liquid and illiquid;
- 13 2. The previous experience of the persons who are proposed to be owners, officers
14 or board members of the proposed medical marijuana establishment at operating other
15 businesses or nonprofit organizations;
- 16 3. The educational achievements of the persons who are proposed to be owners,
17 officers or board members of the proposed medical marijuana establishment;
- 18 4. Any demonstrated knowledge or expertise on the part of the persons who are
19 proposed to be owners, officers or board members of the proposed medical marijuana
20 establishment with respect to the compassionate use of marijuana to treat medical
21 conditions;
- 22 5. Whether the proposed location of the proposed medical marijuana establishment
23 would be convenient to serve the needs of persons who are authorized to engage in the
24 medical use of marijuana;
- 25 6. The likely impact of the proposed medical marijuana establishment on the
26 community in which it is proposed to be located;
- 27 7. The adequacy of the size of the proposed medical marijuana establishment to
28 serve the needs of persons who are authorized to engage in the medical use of marijuana;
8. Whether the applicant has an integrated plan for the care, quality and
safekeeping of medical marijuana from seed to sale;
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; and
10. Any other criteria of merit that the Division determines to be relevant.

25 NRS 453A.328. In subsection 9 of the statute, the Nevada Legislature mandated that the Division
26 consider the amount of taxes and other financial contributions made to the State as part of the process.
27 See, Petition p 20—21 where SAMANTHA REMEDIES challenges this criteria. Therefore, any
28 dispute SAMANTHA REMEDIES has with this criteria is not properly before this Court because the

1 Division had to act within the confines of the statutory requirements. SAMANTHA REMEDIES has
2 not pointed to any deviations from the statutory criteria to argue that the Division acted without reason
3 in this process.

4 In their opening brief, SAMANTHA REMEDIES argues that the Division was arbitrary and
5 capricious but does not identify what score should have been assessed instead and only suggests that the
6 score should have been higher. In their opening brief, SAMANTHA REMEDIES ignores the
7 competitive nature of the application process when they suggest that their application should be
8 reviewed in terms of total points possible rather than in comparison to other applicants. SAMANTHA
9 REMEDIES scored very well with above average points in the following categories: 1) Taxes Paid and
10 Beneficial Contributions; 2) Care, Quality, Safekeeping; and 3) Convenient to Serve Needs (more than
11 double the average score). See, Exhibit 1 for ROA 573. SAMANTHA REMDIES scored just a few
12 points below the average score for the remaining categories: 1) Organizational Structure; 2) Likely
13 Impact on the Community; 3) Adequacy of Building Size and Construction Plans. See, Exhibit 1.
14 SAMANTHA REMEDIES takes an inconsistent position that the scoring process was random when
15 they actually benefitted from the process that was used to be ranked so highly.

16 With the 90-day time period for assessing hundreds of applications, the Division had to rely on
17 the information and explanation supplied by the applicant and did not conduct any independent
18 inspection of the actual proposed establishment. In addition, some categories were designated as part of
19 the non-identified criteria response (NICR) which means that the evaluators would not have access to
20 the identified information as part of their assessment. SAMANTHA REMEDIES scored above average
21 in one of the NICR areas (Care, Quality and Safekeeping) and slightly below average in the other two
22 (Likely Impact on Community and Adequacy of Building Size and Construction Plans). This
23 demonstrates that the Division did review the NICR materials submitted and all were found sufficient
24 for registration—otherwise the score would have been zero points. However, other applicants received
25 a higher score because they presented a stronger application according to the TOOL. SAMANTHA
26 REMEDIES has not established that the Division acted in an arbitrary and capricious manner.

27 ///

28 ///

1 **III. DIVISION IS UNABLE TO ISSUE A REGISTRATION**

2 Even if this Court concluded that a different score was warranted, the Division is unable to issue
3 a registration to SAMANTHA REMEDIES at this time because all twelve registrations for dispensaries
4 in the City of Las Vegas have been issued. Again, the Nevada Legislature only authorized the Division
5 to issue registration certificates "not later than 90 days after receiving an application to operate a
6 medical marijuana establishment as set forth in NRS 453A.322(3). Therefore, the Division does not
7 have statutory authority to advance the applicants from the 2014 application pool after the 90-day period
8 which has already run as of November 3, 2014. The Legislature affirmed this interpretation in the last
9 session when they established a "one time extension period opened by the Division in calendar year
10 2014 for the purpose of issuing eleven additional registrations by September 1, 2015" in Section 5 of
11 Senate Bill 276. *See*, Exhibit 2.

12 Although it is not binding on this Court, the Division asks this Court to take judicial notice that
13 two other Courts have reviewed this issue for dispensaries in the City of Las Vegas and both of their
14 decisions are currently on appeal to the Nevada Supreme Court. SAMANTHA REMEDIES has been
15 denied intervention in both cases. In *GB Sciences Nevada LLC v. State of Nevada/Acres Medical, LLC*
16 *v. State of Nevada*, A-14-710597, Judge Eric Johnson ordered that the registration for Nuleaf CLV
17 Dispensary be rescinded and that Acres Medical, LLC be issued a registration instead. *See*, Exhibit 3.
18 Acres Medical was able to replace GB Sciences Nevada, LLC in the lawsuit based on a ruling by Judge
19 Cadish on a Petition for Mandamus. *See*, Exhibit 4. (Court had directed Division to make a specific
20 change to the score. SAMANTHA REMEDIES was named as a real party in interest and participated in
21 the case.). In *GB Sciences Nevada LLC v. State of Nevada*, A-15-728448, Judge Corey ordered that the
22 registration for Desert Wellness, LLC be rescinded but denied the request to issue a registration to GB
23 Sciences. *See*, Exhibit 5. If that decision is upheld on appeal, the Division will open up a new
24 application period which would allow all interested applicants, including SAMANTHA REMEDIES to
25 apply again.

26 SAMANTHA REMEDIES requested to intervene in both of the GB Sciences cases and was
27 denied. The Division wants to emphasize that SAMANTHA REMEDIES would need to file a separate
28 lawsuit to replace a current registrant because none of the registrants are before this Court. The Nevada

1 Supreme Court is reviewing whether courts can grant this type of relief. Therefore, even if this Court
2 determines that SAMANTHA REMEDIES should receive a different score, the Division is unable to
3 register this dispensary without further intervention from a court.

4 **IV. RELIEF SOUGHT BY PETITIONER IS NOT AVAILABLE IN A PETITION**
5 **FOR JUDICIAL REVIEW**

6 Although this Court has already ruled on this issue in denying the motion to dismiss, the
7 Division requests this Court to reconsider whether SAMANTHA REMEDIES can challenge the process
8 of the Division in registering dispensaries in the City of Las Vegas through a petition for judicial
9 review. The Nevada Supreme Court continues to follow the "plain meaning rule" to find that when "the
10 words of the statute have a definite and ordinary meaning, this court will not look beyond the plain
11 language of the statute, unless it is clear that this meaning was not intended." *Harris Associates v.*
12 *Clark County School Dist.* 119 Nev. 638, 641-642, 81 P.3d 532, 534 (2003). NRS 233B.130(1)
13 provides for judicial review of a decision by any party "who is identified as a party of record by an
14 agency in an administrative proceeding" and is "aggrieved by a final decision in a contested case." NRS
15 233B.032 defines "contested case" to mean the following:

16 . . . a proceeding, including but not restricted to rate making and licensing, in which the
17 legal rights, duties or privileges of a party are required by law to be determined by an
agency after an opportunity for hearing, or in which an administrative penalty may be
imposed.

18 Although "registration" is included in the definition of license under NRS 233B.034 for purposes of
19 NRS 233B.127, the Nevada Legislature made clear that they did not intend to provide for notice and
20 opportunity for hearing prior to a denial or revocation of a registration of an establishment.

21 NRS 453A.320 provides the following:

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

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

1 establishment which would fall under the definition of a "contested case" for purposes of judicial
2 review under Chapter 233B of the Nevada Revised Statutes. The Nevada Supreme Court has ruled that
3 statutes should be interpreted to avoid a reading which would render part of the statute redundant or
4 meaningless when a substantive interpretation can be given. *Board of County Comm'rs Clark County v.*
5 *White*, 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986). Although the Nevada Supreme Court declined
6 to rule on a writ in our case, the Court had previously ruled that judicial review was not available for
7 process server's licenses denied by the Private Investigator's Board because the statutes did not require
8 notice and opportunity for hearing and thus, was not a "contested case." *Private Investigator's*
9 *Licensing Bd. v. Atherley*, 98 Nev.514, 654 P.2d 1019 (1982).

10 The Division preserves its argument that the Legislature did not intend to give applicants the
11 ability to ask a Court to review the competitive scoring and ranking of these confidential applications
12 for this "revocable privilege" of a registration of an establishment as set forth in NRS 453A.320. The
13 Division acknowledges that this is an unusual situation where a state agency would issue registrations
14 without due process or the opportunity for review by a court. Indeed, specific Nevada laws require
15 notice and opportunity to be heard before other licenses or permits issued by the Division can be denied,
16 suspended or revoked. See NRS 449.170 (medical facilities and facilities for the dependent) and NRS
17 446.880 (food establishments). However, with medical marijuana establishments, the Nevada
18 Legislature did not include language for notice and hearing and even allowed for the revocation of the
19 registration of an existing establishment "immediately" as set forth in NRS 453A.340 to provide for an
20 expedited process.

21 The Division recognizes that the Nevada Legislature gave a direct right to judicial review,
22 without any provision for notice and opportunity for hearing, to individuals when an application for a
23 registry identification card is denied according to NRS 453A.210 or revoked under NRS 453A.225 as
24 well as when a request for a new qualifying chronic or debilitating medical condition is denied under
25 NRS 453A.700 by the Division. The Division submits that the omission of such language creating
26 judicial review for establishments in the same chapter further underscores the conclusion that the
27 Legislature did not intend to create such a remedy for judicial review for the denial of an application for
28 a revocable privilege of a medical marijuana dispensary. The Nevada Supreme Court has recognized

1 that where the legislature could easily have inserted exception language into the statute but chose not to,
2 the court would not judicially create an exception. *State Dep't of Motor Vehicles & Public Safety v.*
3 *Brown*, 104 Nev. 524, 526, 762 P.2d 882 (1988).

4 **CONCLUSION**

5 The Division is entitled to deference in scoring and ranking applications for medical marijuana
6 dispensaries. The Division was not arbitrary and capricious and acted within the parameters of
7 legislative requirements. A change in score would be insufficient for the Division to issue a registration
8 to SAMANTHA REMEDIES without further intervention from a Court. The Division continues to
9 assert that any review of this competitive application process must include other parties who are
10 impacted and therefore a petition for judicial review is not the appropriate mechanism. The Division
11 requests this Court to deny the Petition for Judicial Review filed on December 8, 2014.

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

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

15 Dated: June 2, 2016.

16 ADAM PAUL LAXALT
17 Attorney General

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

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that I electronically filed the foregoing by using the electronic filing system on
22 the 2nd day of June, 2016. The Following participants in this case are registered electronic filing
23 system users and will be served electronically:

24
25 Kimberly Maxson-Rushton
26 COOPER LEVENSON, P.A.
27 660 Elton Avenue, Suite A
28 Las Vegas, NV 89107

/s/ Linda Aouste
An Employee of the Office of the Attorney General

EXHIBIT 1

D003

Dispensary Rank:

89

County Rank:

59

Local Jurisdiction Rank:

14

Establishment ID:	D003
Total Score:	163.26
Company Name:	Samantha's Remedies
Establishment Type:	DISPENSARY
County:	Clark
City:	Las Vegas
Local Jurisdiction:	Las Vegas
Address:	3500 West Sahara Ave.
Ownership Contact Name:	Erminia Drobkin
Ownership Contact Title:	President
Ownership Contact Address:	2040 Edgewood Avenue Las Vegas, NV 89102
Ownership Contact Phone Number:	702-496-1132
Ownership Contact Email:	erminia@plioneerloan.com

Ownership List on Next Page

Scoring Details

Scoring Category	Points Scored	Points Possible	Average Score
Financial Plan:	32.33	40	32.51
Organizational Structure:	30.4	50	34.30
Convenient to Serve the Needs:	16	20	7.93
Likely Impact on the Community:	6.3	20	8.56
Taxes Paid and Beneficial Contributions:	11.6	25	9.37
Adequacy of Building Size and Construction Plans:	7.3	20	10.32
Care, Quality, Safekeeping:	59.33	75	51.98
Total Identified Criteria Score:	96.63	155	92.66
Total Non-Identified Criteria Score:	66.63	95	62.30
Total Score:	163.26	250	154.97

EXHIBIT 2

Senate Bill No. 276—Senators Segerblom and Farley

CHAPTER.....

AN ACT relating to medical marijuana; revising provisions relating to the allocation of medical marijuana establishment registration certificates; authorizing the transfer of a medical marijuana establishment registration certificate in certain circumstances; authorizing a medical marijuana establishment to move to a new location under certain circumstances; revising provisions governing the registration of certain medical marijuana establishments; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law limits, by the size of the population of each county, the number of certain medical marijuana establishments that may be certified in each county, and also limits the Division of Public and Behavioral Health of the Department of Health and Human Services to accepting applications for the certification of such establishments to not more than 10 days in any calendar year. (NRS 453A.324) Section 1 of this bill requires the Division to reallocate the certificates provided for a county which has no qualified applicants to the other counties of this State. Section 5 of this bill provides for the reallocation and issuance of such currently unused certificates.

Existing law prohibits the transfer of a medical marijuana establishment agent registration card or a medical marijuana establishment registration certificate. (NRS 453A.334) Section 2 of this bill allows the transfer of ownership in a medical marijuana establishment and the transfer of a medical marijuana establishment registration certificate if the new owner: (1) meets the requirements of existing law relating to liquid assets; (2) submits certain information to allow the Division to perform certain background checks; and (3) proves that its acquisition of the establishment will not violate certain restrictions on holding multiple establishments.

Existing law establishes certain requirements for the location of a medical marijuana establishment. (NRS 453A.350) Section 3 of this bill allows an establishment to move to a new location under the jurisdiction of the same local government if, after a public hearing, the local government approves the new location. Section 4 of this bill requires the Division to revise its regulations to conform with the provisions of section 3.

EXPLANATION - Statute as amended shall be new, statute between brackets [] is material to be omitted

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 453A.324 is hereby amended to read as follows:

453A.324 1. Except as otherwise provided in this section and NRS 453A.326, the Division shall issue medical marijuana establishment registration certificates for medical marijuana

dispensaries in the following quantities for applicants who qualify pursuant to NRS 453A.322:

- (a) In a county whose population is 700,000 or more, 40 certificates;
- (b) In a county whose population is 100,000 or more but less than 700,000, ten certificates;
- (c) In a county whose population is 55,000 or more but less than 100,000, two certificates; and
- (d) In each other county, one certificate.

2. Notwithstanding the provisions of subsection 1, the Division ~~shall not~~:

(a) *Shall not* issue medical marijuana establishment registration certificates for medical marijuana dispensaries in such a quantity as to cause the existence within the applicable county of more than one medical marijuana dispensary for every ten pharmacies that have been licensed in the county pursuant to chapter 639 of NRS. The Division may issue medical marijuana establishment registration certificates for medical marijuana dispensaries in excess of the ratio otherwise allowed pursuant to this subsection if to do so is necessary to ensure that the Division issues at least one medical marijuana establishment registration certificate in each county of this State in which the Division has approved an application for such an establishment to operate.

(b) *Shall, for any county for which no applicants qualify pursuant to NRS 453A.322, within 2 months after the end of the period during which the Division accepts applications pursuant to subsection 4, reallocate the certificates provided for that county pursuant to subsection 1 to the other counties specified in subsection 1 in the same proportion as provided in subsection 1.*

3. With respect to medical marijuana establishments that are not medical marijuana dispensaries, the Division shall determine the appropriate number of such establishments as are necessary to serve and supply the medical marijuana dispensaries to which the Division has granted medical marijuana establishment registration certificates.

4. The Division shall not, for more than a total of 10 business days in any 1 calendar year, accept applications to operate medical marijuana establishments.

Sec. 2. NRS 453A.334 is hereby amended to read as follows:
453A.334 ~~The~~

1. *Except as otherwise provided in subsection 2, the following are nontransferable:*

~~1-1~~ (a) A medical marijuana establishment agent registration card.

~~1-2~~ (b) A medical marijuana establishment registration certificate.

2. A medical marijuana establishment may transfer all or any portion of its ownership to another party, and the Division shall transfer the medical marijuana establishment registration certificate issued to the establishment to the party acquiring ownership, if the party who will acquire the ownership of the medical marijuana establishment submits:

(a) Evidence satisfactory to the Division that the party has complied with the provisions of sub-subparagraph (III) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322 for the purpose of operating the medical marijuana establishment.

(b) For the party and each person who is proposed to be an owner, officer or board member of the proposed medical marijuana establishment, the name, address and date of birth of the person, a complete set of the person's fingerprints and written permission of the person authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(c) Proof satisfactory to the Division that, as a result of the transfer of ownership, no person, group of persons or entity will, in a county whose population is 100,000 or more, hold more than one medical marijuana establishment registration certificate or more than 10 percent of the medical marijuana establishment registration certificates allocated to the county, whichever is greater.

Sec. 3. NRS 453A.350 is hereby amended to read as follows:
453A.350 1. Each medical marijuana establishment must:

~~1-1~~ (a) Be located in a separate building or facility that is located in a commercial or industrial zone or overlay;

~~1-2~~ (b) Comply with all local ordinances and rules pertaining to zoning, land use and signage;

~~1-3~~ (c) Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified and consistent with the traditional style of pharmacies and medical offices; and

~~1-4~~ (d) Have discreet and professional signage that is consistent with the traditional style of signage for pharmacies and medical offices.

2. *A medical marijuana establishment may move to a new location under the jurisdiction of the same local government as its original location and regardless of the distance from its original location if the operation of the medical marijuana establishment at the new location has been approved by the local government. A local government may approve a new location pursuant to this subsection only in a public hearing for which written notice is given at least 7 working days before the hearing.*

Sec. 4. 1. The provisions of any regulation adopted by the Division of Public and Behavioral Health of the Department of Health and Human Services which conflict with the provisions of NRS 453A.350, as amended by section 3 of this act, are void and must not be given effect to the extent of the conflict.

2. The Division of Public and Behavioral Health shall amend or repeal any of its existing regulations that conflict or are inconsistent with the provisions of NRS 453A.350, as amended by section 3 of this act, as soon as practicable after the effective date of this section.

Sec. 5. 1. Notwithstanding any other provision of law, the Division shall reallocate, on or before July 1, 2015, medical marijuana establishment registration certificates for medical marijuana dispensaries pursuant to NRS 453A.324, as amended by section 1 of this act, in the following quantities for applicants who qualify pursuant to NRS 453A.322:

(a) In a county whose population is 700,000 or more, eight certificates for the unincorporated area of such a county;

(b) In a county whose population is 100,000 or more but less than 700,000, one certificate for the unincorporated area of such a county; and

(c) In addition to the certificate described in paragraph (b), in a county whose population is 100,000 or more but less than 700,000:

(1) One certificate for each city whose population is 220,000 or more; and

(2) One certificate for each city whose population is 60,000 or more but less than 220,000.

2. The provisions of NRS 453A.326 do not apply to any medical marijuana establishment registration certificate issued pursuant to subsection 1.

3. Notwithstanding any other provision of law, the Division:

(a) Shall, on or before July 1, 2015, issue a medical marijuana establishment registration certificate pursuant to subsection 1 if:

(1) The medical marijuana establishment is in compliance with paragraph (a) of subsection 4; and

(2) The issuance of such certificate does not exceed the total number of certificates allocated.

(b) May, at any time, after receiving an application to operate a medical marijuana establishment:

(1) Register the medical marijuana establishment; and

(2) Issue a medical marijuana establishment registration certificate to the applicant.

(c) Shall, on or after the effective date of this act and before September 1, 2015, regardless of the Division's ranking of the applications to operate a medical marijuana establishment, issue a medical marijuana establishment registration certificate for the total number of certificates allocated unless the Division determines that the applicant is not qualified.

(d) Shall provide the rationale for determining that an applicant to operate a medical marijuana establishment is not qualified, within 30 days after such determination, to:

(1) An applicant who is denied a medical marijuana establishment registration certificate; and

(2) The local governmental jurisdiction where the proposed medical marijuana establishment is to be located.

4. A local governmental jurisdiction may:

(a) Issue a business license or deem a medical marijuana establishment in compliance with all local governmental ordinances or rules, regardless of any ranking of the establishment established by the Division.

(b) Consider diversity, location and community ties in determining whether the medical marijuana establishment is in compliance with all applicable local governmental ordinances or rules.

(c) Provide by ordinance a limitation on the total number of medical marijuana establishments which is less than the number allocated pursuant to subsection 1, if the local governmental jurisdiction determines that the community is adequately served by the number of current establishments.

5. Any application period established by the Division pursuant to this section:

(a) Is a one-time extension of the application period opened by the Division in calendar year 2014;

(b) Must not require a new application if an application has previously been submitted;

(c) Must not require the payment of any additional application fees if such fees have previously been paid; and

(d) Is separate and apart from and must not be included within the 10-day period for the acceptance of applications pursuant to subsection 4 of NRS 453A.324, as amended by section 1 of this act.

6. As used in this section:

(a) "Division" means the Division of Public and Behavioral Health of the Department of Health and Human Services.

(b) "Local governmental jurisdiction" means a city, town, township or unincorporated area within a county.

Sec. 6. 1. This section and sections 1 and 5 of this act become effective upon passage and approval.

2. Section 5 of this act expires by limitation on December 31, 2015.

3. Sections 2, 3 and 4 of this act become effective upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act, and on October 1, 2015, for all other purposes.

EXHIBIT 3


CLERK OF THE COURT

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11 Counsel for Plaintiff in Intervention
12 Acres Medical, LLC

13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

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

Case No.: A710597
Dept. No.: XX

18 Plaintiff,

19 v.

NOTICE OF ENTRY OF ORDER ON
PLAINTIFF GB SCIENCES NEVADA,
LLC'S MOTION FOR SUMMARY
JUDGMENT AND ON DEFENDANT
NULEAF CLV DISPENSARY, LLC'S
COUNTERMOTION FOR SUMMARY
JUDGMENT

20 STATE OF NEVADA, DIVISION OF
21 PUBLIC AND BEHAVIORAL HEALTH OF
22 THE DEPARTMENT OF HEALTH AND
23 HUMAN SERVICES; CITY OF LAS VEGAS,
24 a municipal corporation and political
25 subdivision of the State of Nevada; DESERT
26 AIRE WELLNESS, LLC, a Nevada limited
27 liability company; NULEAF CLV
28 DISPENSARY, LLC, a Nevada limited
liability company; DOES 1 through 100; and
ROE ENTITIES 1 through 100,

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CITY OF LAS VEGAS.

GREENERG TRAUER, LLP
3773 Howard Hughes Parkway
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1 a municipal corporation and political
2 subdivision of the State of Nevada; NULEAF
3 CLV DISPENSARY, LLC, a Nevada limited
4 liability company; GB SCIENCES NEVADA,
5 LLC, a Nevada limited liability company,

6
7 Defendants in Intervention

8
9 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER ON
10 PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT
11 AND ON DEFENDANT NULEAF CLV DISPENSARY, LLC'S COUNTERMOTION FOR
12 SUMMARY JUDGMENT was entered in the above-captioned matter on the 14th day of
13 December, 2015.

14 DATED this 15th day of December, 2015.

15 GREENBERG TRAURIG, LLP

16 By: /s/ Moorea L. Katz
17 MARK E. FERRARIO (NV Bar No. 1625)
18 MOOREA L. KATZ (NV Bar No. 12007)
19 3773 Howard Hughes Parkway, Suite 400 North
20 Las Vegas, Nevada 89169
21 Counsel for Plaintiff in Intervention
22 Acres Medical, LLC
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 15th day of
3 December, 2015, I caused a true and correct copy of the foregoing NOTICE OF ENTRY OF
4 ORDER ON PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY
5 JUDGMENT AND ON DEFENDANT NULEAF CLV DISPENSARY, LLC'S
6 COUNTERMOTION FOR SUMMARY JUDGMENT to be filed and served via the Court's
7 Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date
8 and place of deposit in the mail.

9
10 /s/ Joyce Heilich

11 An employee of GREENBERG TRAURIG, LLP
12
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1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

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

6 Plaintiff,

7 vs.

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

19 Defendants.

20 ACRES MEDICAL, LLC,

21 Plaintiff in Intervention,

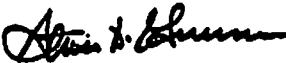
22 vs.

23 STATE OF NEVADA, DIVISION OF PUBLIC
24 AND BEHAVIORAL HEALTH OF THE
25 DEPARTMENT OF HEALTH AND HUMAN
26 SERVICES; CITY OF LAS VEGAS, a
27 municipal corporation and political subdivision
28 of the State of Nevada; NULEAF CLV
29 DISPENSARY, LLC, a Nevada limited liability
30 company; GB SCIENCES NEVADA, LLC, a
31 Nevada limited liability company,

32 Defendants in Intervention.

Case No. A-14-710597-C
Depl. No. XX

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CLERK OF THE COURT

1
2 **ORDER**

3 THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's
4 ("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant NULEAF CLV
5 DISPENSARY, LLC ("NuLeaf") Countermotion for Summary Judgment ("Countermotion");
6 Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, P.L.C.;
7 Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the
8 "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General,
9 through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant NuLeaf, having
10 appeared by and through its attorneys of record, PISANELLI BICE, PLLC; Intervenor ACRES
11 MEDICAL, LLC ("Acres"), having appeared by and through its attorneys of record, GREENBERG
12 TRAURIG, LLP, the Court having reviewed the papers and pleadings on file herein, having heard
13 the arguments of counsel, and good cause appearing, THE COURT FINDS AND CONCLUDES:

14 **FINDINGS OF FACTS**

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

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

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

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

1 5. The Division, as well as the local jurisdiction, played a role in the ultimate licensing
2 of MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,
3 zoning and proximity to other business or facilities (the "Local Application Process") while the
4 Division focused on public health, public safety, and marijuana as a medicine (the "Division
5 Application Process").

6 6. In accordance with its responsibilities, the City of Las Vegas enacted Ordinance No.
7 6321 and 6324 to establish zoning regulations, licensing regulations, and standards for MME
8 locations.

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

10 8. While the Division was allowed to accept all applications submitted, under N.R.S. §
11 453A.322, the Division could only issue a medical marijuana establishment registration certificate (a
12 "Provisional Certificate") if the applicant's application included six (6) specific items and if the
13 applicant otherwise met the requirements established by N.R.S. Chapter 453A.

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

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

22 10. Plaintiff, Acres, and Nulcal were three of the 49 applicants for a Dispensary License
23 in the City of Las Vegas.

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

1 12. The City of Las Vegas denied special use permits and compliance permits to ten (10)
2 applicants, including Nuleaf.

3 13. On October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the
4 Division that Nuleaf's application for a special use permit and compliance permit from the City of
5 Las Vegas had been denied as not in compliance with land use restrictions and city code and
6 ineligible for a business license.

7 14. The City of Las Vegas letter was intended to comply, and did comply, with NRS
8 453A.322(3)(a)(5).

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

14 16. Notwithstanding, on or about November 3, 2014, the Division registered Nuleaf as a
15 medical marijuana establishment and issued a provisional registration certificate for an MMF
16 Dispensary (the "Provisional License").

17 17. At the time the Department registered Nuleaf and issued a Provisional License,
18 Nuleaf did not meet the requirements of N.R.S. § 453A.322, which specifically permitted the
19 Division to register a medical marijuana establishment and issue a registration certificate if the
20 business seeking to register had completed all of the requirements of subsection 3(a), including
21 providing a letter from the applicable local authority certifying that the proposed medical marijuana
22 establishment is in "compliance with [zoning] restrictions and satisfies all applicable building
23 requirements."
24

1 18. The Nevada Department of Health and Human Services should have registered and
2 issued the registration certificate to the medical marijuana establishment to the top twelve ranked
3 applicants which met all the requirements of the statute.

4 19. Pursuant to the plain terms of the statute, the Division should not have registered
5 Nuleaf and issued it a registration certificate as Nuleaf had not met all the requirements of the
6 statute. The Court's reading of the statute is consistent with the apparent goal of the statute and the
7 legislature to quickly move the opening and operation of dispensaries in the state. This goal can best
8 be achieved through the Division registering certificates for the most qualified applicants who have
9 obtained preliminary approval that they are in "compliance with [zoning] restrictions and satisfies all
10 applicable building requirements" of the municipality. In view of the time limitations the statute sets
11 for when the Division may register certificates, the legislature clearly sought to avoid the situation
12 where the Division approved an applicant but the applicant then failed to obtain zoning or business
13 licensing from the municipality, resulting in a delay in the opening of the desired number of
14 dispensaries.

15 20. On November 9, 2015, the Court heard oral argument on intervenor Acres Medical,
16 LLC's ("Acres") Motion to Intervene as a Matter of Right Pursuant to NRCP 24 on Order
17 Shortening Time ("Motion to Intervene"). Acres' Motion to Intervene argued that Acres, not
18 Plaintiff GB Sciences, was next in line to receive a provisional registration certificate, should one
19 become available. Acres argued that pursuant to District Court order dated October 8, 2015, in *Acres*
20 *Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral*
21 *Health, et al.*, Case Number A-15-719637-W, Acres should have been the thirteenth ranked
22 applicant on November 3, 2014. The premise for Acres' intervention was that Acres was entitled to
23 the relief sought by GB Sciences in this action and Acres was adopting the arguments asserted by
24 GB Sciences. The Court granted Acres' Motion to Intervene at the November 9, 2015 hearing.

21. The Court may take judicial notice, whether requested or not, of facts capable of verification from a reliable source. See NRS 47.150(1). The Court takes judicial notice that pursuant to District Court order dated October 8, 2015, in *Acres Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral Health, et al.*, Case Number A-15-719637-W, Acres should have been the thirteenth ranked applicant on November 3, 2014. Accordingly, Acres, not Plaintiff GB Sciences, is the next applicant in line to receive a registration certificate should one become available.

22. 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

23. 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. Cason Royale W., 97 Nev. 67, 624 P.2d 17 (1981).

24. 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).

25. 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.

26. 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).

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

3 28. The Division has acknowledged that a complaint for declaratory and injunctive relief
4 is appropriate.

5 29. The issuance of the Provisional Certificate to Nuleaf was in error and contrary to
6 NRS § 453A.322(3).

7 30. Nuleaf should have been disqualified due to their non-compliance with NRS §
8 453A.322(3)(a)(5).

9 31. The Plaintiff and Acres have an inadequate remedy at law.

10 32. To require the Plaintiff or Acres to simply apply again as part of a new application
11 period is to deny the Plaintiff and Acres all of their remedies, not only because it delays their ability
12 to proceed forward with the initial applicants, but also because there is no guarantee that the Plaintiff
13 or Acres would even qualify for a Provisional License the second time around when comparing the
14 Plaintiff or Acres to the second, new set of applicants.

15 33. It would be inequitable and inappropriate to deprive the City of Las Vegas of one of
16 the twelve Provisional Certificates allocated to it due to an error by the Division.

17 34. At the hearing on the motions on November 9, 2015, counsel for the Division raised
18 the fact the City of Las Vegas sent its letter on October 30, 2014, four days before and only one
19 business day before the Division's planned issuance of registration certificates on November 3,
20 2014. The Division was not aware of the letter and those entities in conformance with City of Las
21 Vegas land use, zoning and building requirements at the time it issued registration certificates.
22 However, counsel stated the Division in issuing certificates looked at submitted applications without
23 considering the local approval requirement of the statute or whether any of the applicants in
24 municipalities throughout the state had received a letter of approval from the municipality where

1 they were located. Consequently, the Court finds the timing of the letter and whether the Division
2 should have been aware of it presents no excuse for the Division failing to comply with the
3 provisions of the statute. The Division was not looking for, inquiring, following up or even
4 considering whether applicants had complied with the statutory requirement of an approval letter
5 from the municipality where the applicant's business would be located.

6 35. The Court further finds no evidence presented suggests the City of Las Vegas sought
7 to use the zoning or land use process as a subterfuge for the City to determine the most qualified
8 applicants in place of the Division. The City made a determination as to applicants' compliance
9 with its zoning restrictions and satisfaction of applicable building requirements as it was specifically
10 expected to do pursuant to the statute before the registering of certificates.

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

13 **NOW THEREFORE:**

14 37. **IT IS HEREBY ORDERED** Plaintiff's Motion for Summary Judgment is
15 **GRANTED** in part and **DENIED** in part.

16 38. **IT IS FURTHER ORDERED** that Plaintiff's Motion is **GRANTED** to the extent
17 Plaintiff is entitled to a declaration that Nuleaf should not have been registered or issued a
18 certification of registration as a medical marijuana establishment because it had not met all the
19 necessary requirements of 453A.322(3)(a).

20 39. **IT IS FURTHER ORDERED** that the Division shall rescind or withdraw the
21 registration of Nuleaf as a medical marijuana establishment.

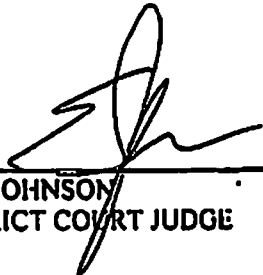
22 40. **IT IS FURTHER ORDERED** that Plaintiff's Motion is **DENIED** to the extent
23 Plaintiff seeks the re-issue of Nuleaf's registration to Plaintiff.
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41. IT IS FURTHER ORDERED that the Division register intervenor Acres and issue Acres a registration certificate.

42. IT IS FURTHER ORDERED Defendant Nuleaf's Countermotion for Summary Judgment is DENIED.

DATED this 11th day of December, 2015.


ERIC JOHNSON
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Order to be served as indicated below:

JAMES E. SHAPIRO, ESQ.
jshapiro@smithshapiro.com
Attorney for Plaintiff, Counter Claimant, Intervenor Defendant

TODD L. BICE, ESQ.
tlb@pisanelli PLLC.com
Attorney for Defendant, Intervenor Defendant

MARK E. FERRARIO, ESQ.
lvlttdock@gtlaw.com
Attorney for Counter Defendant, Intervenor Plaintiff

/s/Kelly Muranaka

Kelly Muranaka
Judicial Executive Assistant

EXHIBIT 4


CLERK OF THE COURT

1 NTSO
2 MARK E. FERRARIO (NV Bar #1625)
3 LONDON LERNER (NV Bar #13368)
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11 *Counsel for Plaintiffs/Petitioners*
12 *Acres Medical, LLC and Acres Cultivation, LLC*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ACRES MEDICAL, LLC, a Nevada limited
12 liability company; and ACRES
13 CULTIVATION, LLC, a Nevada limited
14 liability company,

15 Plaintiffs/Petitioners,

16 - vs. -

17 NEVADA DEPARTMENT OF HEALTH
18 AND HUMAN SERVICES, DIVISION OF
19 PUBLIC AND BEHAVIORAL HEALTH,

20 Defendant/ Respondent,

21 And

22 NLVG, LLC; NULEAF CLV CULTIVATION,
23 LLC; THE MEDMEN OF NEVADA 2, LLC;
24 CANNABIS RENAISSANCE GROUP, LLC;
25 M M DEVELOPMENT, LLC; NYE
26 NATURAL MEDICINAL SOLUTIONS, LLC;
27 GREEN LIFE PRODUCTIONS, LLC; GWGA,
28 LLC; NEVADA NATURAL MEDICINES,
LLC; WELLNESS ORCHARDS OF
NEVADA, LLC; NCMM, LLC; ACC
INDUSTRIES, INC.; SAMANTHA'S
REMEDIES; NEVADA CARES, LLC; THC
NEVADA, LLC; RED ROCK WELLNESS,
LLC; QUALCAN OF LAS VEGAS, LLC;
PHYSIS ONE, LLC; BUFFALO CENTER
MEDICAL ADVOCATES, L.L.C.; PRIMO
DISPENSARY; DOE ENTITIES 1-5; ROE
ENTITIES 1-4, POE ENTITIES 1-16.

Defendants/
Real Parties In Interest.

Case No.: A-15-719637-W
Dept. No.: VI

NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' PETITION FOR
MANDAMUS

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LV 420550087v1

YOU AND EACH OF YOU will please take notice that the Order Granting Plaintiffs' Petition for Mandamus was entered in the above-captioned matter on the 8th day of October, 2015. A copy of the ORDER GRANTING PLAINTIFFS' PETITION FOR MANDAMUS is attached hereto as Exhibit A.

DATED this 9th day of October, 2015.

GREENBERG TRAURIG, LLP

By: /s/ Landon Lerner
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 9th day of October, 2015, I caused a true and correct copy of the foregoing *Notice of Entry of Order Granting Plaintiffs' Petition for Mandamus* to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP

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LV 420550087v1

EXHIBIT A

LV 419853889v1


CLERK OF THE COURT

1 **ORDG**
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11 *Counsel for Plaintiffs/Petitioners*
12 *Acres Medical, LLC and Acres Cultivation, LLC*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **ACRES MEDICAL, LLC, a Nevada limited**
16 **liability company; and ACRES**
17 **CULTIVATION, LLC, a Nevada limited**
18 **liability company,**

19 **Plaintiffs/Petitioners,**

20 **- vs. -**

21 **NEVADA DEPARTMENT OF HEALTH**
22 **AND HUMAN SERVICES, DIVISION OF**
23 **PUBLIC AND BEHAVIORAL HEALTH,**

24 **Defendant/ Respondent,**

25 **And**

26 **NLVO, LLC; NULEAF CLV CULTIVATION,**
27 **LLC; THE MEDMEN OF NEVADA 2, LLC;**
28 **CANNABIS RENAISSANCE GROUP, LLC;**
M M DEVELOPMENT, LLC; NYE
NATURAL MEDICINAL SOLUTIONS, LLC;
GREEN LIFE PRODUCTIONS, LLC; GWGA,
LLC; NEVADA NATURAL MEDICINES,
LLC; WELLNESS ORCHARDS OF
NEVADA, LLC; NCMM, LLC; ACC
INDUSTRIES, INC.; SAMANTHA'S
REMEDIES; NEVADA CARES, LLC; THC
NEVADA, LLC; RED ROCK WELLNESS,
LLC; QUALCAN OF LAS VEGAS, LLC;
PHYSIS ONE, LLC; BUFFALO CENTER
MEDICAL ADVOCATES, L.L.C.; PRIMO
DISPENSARY; DOE ENTITIES 1-5; ROE
ENTITIES 1-4, POE ENTITIES 1-16.

Defendants/
Real Parties In Interest.

Case No.: A-15-719637-W
Dept. No.: VI

ORDER GRANTING PLAINTIFFS'
PETITION FOR MANDAMUS

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input checked="" type="checkbox"/> Other -

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1 On September 29, 2015, at 8:30 a.m., Plaintiffs' Petition for Mandamus ("Petition") came on
2 before the Honorable Judge Elissa F. Cadish in Department 6 of the above-captioned Court. Mark
3 Ferrario, Esq. and Landon Lerner, Esq. appeared for Plaintiffs, and Linda Anderson, Esq. appeared for
4 the Nevada Department Of Health And Human Services, Division Of Public And Behavioral Health
5 (the "Division"). After reviewing the pleadings and papers on file in this Action, hearing argument at
6 the time of the hearing, and good cause appearing therefore, the Court made the following findings:

7 1. Plaintiffs submitted to the Division multiple applications to operate Medical Marijuana
8 Establishments ("MME"), including Application D011 to operate a medical marijuana dispensary in
9 the City of Las Vegas (the "Application");

10 2. The Division was obligated to score and rank accurately all MME applications
11 submitted to the Division;

12 3. One of the categories considered by the Division in scoring applications was
13 Organizational Structure;

14 4. Plaintiffs submitted the same information on all of its applications, including the
15 Application, for the Organizational Structure category;

16 5. Despite having information indicating that the Application should have received a
17 score of 41.3 in the Organizational Structure category, the Division gave the Application a score of
18 0 in the Organizational Structure category;

19 6. The Division gave Plaintiffs' other applications with the exact same information in the
20 Organizational Structure category a score of 41.3 for the Organizational Structure category;

21 7. The Division's failure to review all of the information in its possession that would
22 have resulted in the Division giving the Application a score of 41.3 in the Organizational Structure
23 category was an arbitrary and capricious exercise of the Division's official duties;

24 8. Had the Division performed properly its official duties in scoring the Application, it
25 would have included an additional 41.3 points for the Organizational Structure category;

26 9. Had the Division performed properly its official duties in scoring the Application, the
27 Application would have received a score of 167.3;

28 ///

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10. Had the Division performed properly its official duties in scoring the Application, the Application would have been ranked number 13;

11. Additional dispensary registrations from the State of Nevada and licenses from the City of Las Vegas may become available to Plaintiffs to operate a medical marijuana dispensary in the City of Las Vegas such that a failure to grant mandamus would result in prejudice and a substantial likelihood of significant harm to Plaintiffs;

12. Plaintiffs withdrew their Petition regarding their cultivation applications.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiffs' Petition is GRANTED.

IT IS FURTHER ORDERED that:

1. The Division will rescure the Application and include 41.3 points for the Organizational Structure category;

2. The Division will rescore the Application and assign it a score of 167.3;

3. The Division will re-rank officially the Application at number 13; and

4. Plaintiffs' alternative relief is now moot and mandamus is the final judgment in this action.


IT IS SO ORDERED.

DATED this 8 day of October, 2015.


DISTRICT COURT JUDGE

Respectfully submitted by:

GREENBERG TRAURIG, LLP

By: 
MARK L. FERRARIO (NV Bar #1625)
LONDON LERNER (NV Bar #13368)
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Counsel for Plaintiffs

[signatures continued on following page]

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Approved as to form:

OFFICE OF THE ATTORNEY GENERAL
ADAM PAUL LAXALT

By: Linda C. Anderson

LINDA C. ANDERSON (NV Bar #4090)
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EXHIBIT 5


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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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

vs.

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

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendant.

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

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

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

3
4 DATED this 28th 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 28th 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 Toglianti, on May 9, 2014.

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

Exhibit "I"

Exhibit "I"

ORIGINAL

Alvin L. Johnson
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
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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,

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

23 Defendants.

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 Court	<input type="checkbox"/> Judgment of Arbitration

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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 matter¹, 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 ¹ 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.

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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 \ \ \

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. Mailey, 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.

\\

1 NOW THEREFORE:

2 31. IT IS HEREBY ORDERED Plaintiff's 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:

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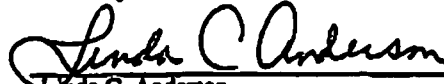
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Approved:
MICHAEL H. SINGER, LTD.

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Case No. A-15-728448-C
Order re: MSJ

Approved:
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