

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.

No.: 71123 Electronically Filed
Nov 22 2016 08:12 a.m.
Elizabeth A. Brown
District Court Clerk of Supreme Court
A-14-710874-J

Dept. No.: VIII

RESPONDENT'S MOTION TO MAINTAIN UNDER SEAL
RESPONDENT'S APPENDIX

Respondent Samantha Inc. d/b/a Samantha's Remedies, by and through its counsel, Kimberly Maxson-Rushton, Esq. of the law firm of Copper Levenson, P.A., move the Court, pursuant to Rule 3(1) of Part VII of the Nevada Supreme Court Rules Governing Sealing and Redacting Court Records, to maintain under seal Respondent's Appendix to Respondent's Answering Brief. Exhibits contain in the Appendix contain confidential information not intended for public view.

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This Motion to Seal is made and based on the following Memorandum of Points and Authorities.

Respectfully submitted this 21st day of November, 2016.

COOPER LEVENSON, P.A.

By /s/ Kimberly Maxson-Rushton
Kimberly Maxson-Rushton
1835 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Respondent
Samantha Inc. d/b/a Samantha's Remedies

MEMORANDUM OF POINTS AND AUTHORITIES

The Nevada Supreme Court Rules Governing Sealing and Redacting Court Records ("SRCR") provide that "[a]ny person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion..." SRCR 3(1). "The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record." SRCR 3(4). "The ... privacy ... interests that outweigh the public interest in open court records include findings that: [t]he sealing or redaction is justified or required by [some] identified compelling circumstance." SRCR 3(4)(h). Once a motion to seal or redact is pending, "the information to be sealed or redacted remains confidential for a reasonable period of time until the court rules on the motion." SRCR 3(2). Finally, "[c]ourt records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court." SRCR 7.

Here, Respondent's Appendix contains documents which must remain private. These documents include the Request for Applications, the TOOL used to evaluate applications for Medical Marijuana Establishments, and the Respondent's Application. NRS 452A.700 speaks to the confidentiality of the TOOL and Applications. Specifically, NRS 452A.700(1) states as follows:

Duties of Division concerning confidentiality; certain items of information not subject to subpoena, discovery or inspection.

1. Except as otherwise provided in this section, NRS 239.0115 and subsection 4 of NRS 453A.210, the Division shall not disclose:

(a) The contents of any tool used by the Division to evaluate an applicant or its affiliate.

(b) Any information, documents or communications provided to the Division by an applicant or its affiliate pursuant to the provisions of this chapter, without the prior written consent of the applicant or

affiliate or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or affiliate.

(c) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the Division or its designee has issued a registry identification card or letter of approval.

Except as otherwise provided in NRS 239.0115, the items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

Moreover, it is the intention of the Respondent to keep these documents sealed from public access, as they not only contain the proprietary information used by the Appellant to evaluate the applications (i.e. the TOOL) but the private information regarding the business plan proffered by the Respondent along with the financial information of the proposed co-owners of Samantha's Remedies, Bill and Erminia Drobkin. Lastly as a courtesy to Appellant who has repeatedly asserted the confidential nature of the documents, Respondent makes this request. As such, in order to protect the compelling privacy and business interests of all parties, Respondent requests that Respondent's Appendix be kept under seal.

Respectfully submitted this 21st day of November, 2016.

COOPER LEVENSON, P.A.

By /s/ Kimberly Maxson-Rushton

Kimberly Maxson-Rushton

1835 Village Center Circle

Las Vegas, Nevada 89134

Attorney for Respondent

Samantha Inc. d/b/a Samantha's Remedies

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 21st day of November, 2016, I electronically filed the foregoing, **RESPONDENT'S MOTION TO MAINTAIN UNDER SEAL RESPONDENT'S APPENDIX**, with this Court's electronic filing system. I further certify that I caused a true and correct copy to be mailed via United States Parcel Service, First Class, postage prepaid on November 21, 2016 fully addressed as follows:

Adam Paul Laxalt
Attorney General
Linda C. Anderson
Chief Deputy Attorney General
555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
Attorneys for Appellant

By /s/ Lisa C. McMillan

An Employee of
COOPER LEVENSON, P.A.