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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
	:	DOCKET NO.
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT IN EQUITY SEEKING A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this Petition and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a Judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
213-A North Front Street
Harrisburg, PA 17101
Phone: 717-232-0581

Dauphin County Lawyer Referral Service
Dauphin County Bar Association
213 North Front Street
Harrisburg, PA 17101
Phone: 717-232-7536

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

FLORIO, PERRUCCI, STEINHARDT & FADER, LLC

By: */s/ Seth R. Tipton*
Seth R. Tipton, Esquire

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PETITION FOR REVIEW
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AND NOW Petitioner, Keystone ReLeaf LLC (hereinafter, "Petitioner" and/or "Keystone"), by and through its undersigned counsel, hereby files this Verified Petition for Review in the Nature of a Complaint in Equity Seeking A Declaratory Judgment and Injunctive Relief (hereinafter "Petition") against the Pennsylvania Department of Health, Office of Medical Marijuana (hereinafter the "Office" and/or "Respondent"), seeking review of the Respondent's systemically flawed, inequitable, and unconstitutional process for: (1) accepting, reviewing, and scoring medical marijuana grower/processor and medical marijuana dispensary permit applications; and (2) issuing medical marijuana grower/processor permits (hereinafter "Grower/Processor Permits") and medical marijuana dispensary permits (hereinafter "Dispensary Permits") to selected applicants (hereinafter, collectively,

the "Permitting Process"), pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 *et seq.*, and in support thereof, asserts as follows:

STATEMENT OF JURISDICTION

1. The Commonwealth Court of Pennsylvania has original jurisdiction over this Petition pursuant to 42 Pa. C.S.A. § 761(a) which provides that this Court "shall have original jurisdiction of all civil actions or proceedings ... against the Commonwealth government, including any officer thereof, acting in his official capacity." This Petition is addressed to the Court's original jurisdiction and seeks declaratory and injunctive relief.

2. The Declaratory Judgment Act, 42 Pa. C.S.A. § 7531 *et. seq.*, provides for relief from uncertainty and insecurity with respect to rights, statuses, and legal relations affected by a statute.

3. This Court has original jurisdiction to resolve facial challenges concerning the constitutionality and validity of the Permitting Process as applied by the Respondent to all medical marijuana Grower/Processor Permit and Dispensary Permit applicants. *See Pennsylvania Indep. Oil & Gas Ass'n v. Com., Dep't of Envtl. Prot.*, 135 A.3d 1118, 1129–30 (Pa. Cmwlth. Ct. 2015).

4. Further, Petitioner has no adequate statutory remedy because only this Court has the authority to grant the declaratory and injunctive relief requested herein as the Respondent cannot enjoin itself as a matter of law. *See Empire Sanitary*

Landfill, Inc. v. Department of Environmental Resources, 684 A.2d 1047, 1055 (Pa. 1996); *Pennsylvania Indep. Oil & Gas*, 135 A.3d at 1129–30 (holding that a plaintiff's challenge to the systemic validity of a Commonwealth permitting process pursuant to the Declaratory Judgment Act does not require the exhaustion of administrative remedies and properly lies within the Commonwealth Court's original jurisdiction).

5. This Court also has jurisdiction to review Petitioner's challenge to the Respondent's ongoing enforcement of its own regulations governing the Permitting Process because the Permitting Process has a direct and immediate impact on Pennsylvania's nascent medical marijuana industry and the patients to be served by this industry. Further, the continued administration of the flawed Permitting Process creates a unique hardship to Petitioner and all medical marijuana Grower/Processor Permit and Dispensary Permit applicants. *Arsenal Coal Co. v. Com., Dep't of Envtl. Res.*, 477 A.2d 1333, 1339 (Pa. 1984) (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), *modified on other grounds*, *Califano v. Sanders*, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977)).

6. In addition, this Court has jurisdiction over this action pursuant to Pennsylvania Rule of Appellate Procedure 1781(b) to resolve Petitioner's request for a stay of the Permitting Process due to Respondent's denial of the same stay request in a currently pending, separate administrative appeal. Pa. R.A.P. 1781(b).

7. Lastly, this Court has collateral order jurisdiction over this action pursuant to Pennsylvania Rule of Appellate Procedure 313 due to the Respondent's denial of Petitioner's request for a stay of the Permitting Process in a currently pending, separate administrative appeal. Pa. R.A.P. 313(b).

PARTIES

8. Petitioner, Keystone ReLeaf LLC, is a Pennsylvania limited liability company with an address of 60 West Broad Street, Suite 102, Bethlehem, PA 18018 that was an applicant for a Grower/Processor Permit and Dispensary Permits.

9. Respondent, the Department of Health, Office of Medical Marijuana, is a Commonwealth Agency with an address of 8th Floor West, 625 Forster Street, Harrisburg, PA 17120, responsible for the issuance of Grower/Processor Permits and Dispensary Permits. 42 Pa. C.S.A. § 102.

FACTUAL BACKGROUND

10. On April 17, 2016, Governor Tom Wolf signed into law Senate Bill 3, Pennsylvania's Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 *et seq.* (hereinafter the "Act"), which became effective on May 17, 2016, and established a framework for the legalization of medical marijuana in the Commonwealth for certain medical conditions.

11. The Respondent is the Commonwealth Agency responsible for implementing the Act, including developing rules, issuing patient identification cards and carrying out the Permitting Process. 35 P.S. § 10231.602.

12. Beginning February 20, 2017 and continuing until March 20, 2017 (hereinafter the "Application Period"), the Respondent accepted applications from entities interested in obtaining a limited number of medical marijuana Grower/Processor Permits and/or Dispensary Permits.

13. During the Application Period, the Respondent received four hundred fifty seven (457) applications - one hundred seventy-seven (177) for growers/processors and two hundred eighty (280) for dispensaries.

14. Respondent was required to review applications in accordance with the criteria set forth in the Act, 35 P.S. § 10231.603(a.1), and the factors listed in the Medical Marijuana Temporary Regulations (hereinafter the "Temporary Regulations"). 28 Pa. Code § 1141.24(b).

15. Specifically, the Act provides that the Respondent "may grant or deny a permit to a grower/processor or dispensary" according to the following factors:

> (1) The applicant will maintain effective control of and prevent diversion of medical marijuana.
>
> (2) The applicant will comply with all applicable laws of this Commonwealth.
>
> (3) The applicant is ready, willing and able to properly carry on the activity for which a permit is sought.

(4) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings and equipment to properly grow, process or dispense medical marijuana.

(5) It is in the public interest to grant the permit.

(6) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

(7) The applicant is able to implement and maintain security, tracking, recordkeeping and surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery, transportation, distribution or the dispensing of medical marijuana as required by the department.

(8) The applicant satisfies any other conditions as determined by the department.

35 P.S. § 10231.603(a)(1).

16. The Act further provides that the Respondent must consider the following criteria for awarding permits to different regions of the Commonwealth:

(1) The regional population.

(2) The number of patients suffering from serious medical conditions.

(3) The types of serious medical conditions.

(4) Access to public transportation.

(5) Any other factor the department deems relevant.

35 P.S. § 10231.603(d).

17. The Temporary Regulations state that the Respondent "will review initial permit applications submitted by applicants according to the criteria in section 603(a.1) of the [Act] and the factors listed in 1141.24(b)." 28 Pa. Code § 1141.33.

18. The factors set forth in Section 1141.24(b) include those listed in 35 P.S. § 10231.603(d) and also add the following additional considerations: "[t]he health care needs of rural and urban areas", and "[a]reas with recognized need for economic development." 28 Pa. Code § 1141.24(b).

19. In addition, the Temporary Regulations require certain information be submitted with all initial applications, including: (i) the name of the applicant; (ii) the address for the grower/processor and dispensary sites and facilities; (iii) personal information about the applicant's principals, operators, financial backers, and employees, including criminal history records checks; (iv) evidence that the applicant is responsible and capable of successfully establishing and operating a medical marijuana facility; (v) an operational timetable and security plan; (vi) relevant financial information sufficient to demonstrate compliance with the Act's capital requirements (vii); and all other information required by the Office. 28 Pa. Code § 1141.29.

20. On June 20, 2017, after a secretive selection process without further involvement of the applicants, the Respondent issued twelve (12) Grower/Processor Permits of the twenty-five (25) permitted by the Act.[1]

21. Additional Grower/Processor Permits are expected to be issued in the future.

22. Thereafter, on June 29, 2017, the Respondent issued twenty-seven (27) Dispensary Permits of the fifty (50) available.[2]

23. Additional Dispensary Permits are expected to be issued in the future.

24. The Respondent issued this first round of Grower/Processor Permits and Dispensary Permits pursuant to the fundamentally flawed, secretive, inequitable, unconstitutional, and illusory Permitting Process, and, upon information and belief, intends to continue to adhere to this Permitting Process to issue future medical marijuana Grower/Processor Permits and Dispensary Permits.

25. As detailed more fully herein, the Respondent's Permitting Process denies all medical marijuana permit applicants their constitutional right of due process to fairly and meaningfully challenge their denial of permit by way of

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[1] Keystone submitted a grower/processor permit application during the Application Period, but was not one of the applicants issued a permit on June 20, 2017. On June 29, 2017, Keystone timely filed an administrative appeal of the Office's denial of its grower/processor application, filed under Agency Docket No. MM-17-017.

[2] Keystone submitted two (2) dispensary applications during the Application Period, but was not one of the applicants issued a permit on June 29, 2017. On July 7, 2017, Keystone timely filed two (2) administrative appeals of the Office's denial of its dispensary applications filed under Agency Docket Nos. MM-17-095 D and No. MM-17-096-D.

administrative review, making the Respondent's Permitting Process unconstitutional, inherently inequitable, and all of the Respondent actions in connection with the Permitting Process unlawful, *ultra vires*, and arbitrary, capricious, and unreasonable.

26. In addition, the Respondent arbitrarily and unfairly waived certain Legislative requirements for some applicants but not all, made exceptions for certain applicants but not others, inconsistently scored and reviewed applications, and ultimately treated like applicants differently, due to bias, favoritism, or otherwise, rendering the Permitting Process arbitrary, capricious, and unreasonable, and lacking the force of law.

27. The Respondent has also failed to adhere to its own Temporary Regulations, resulting in the Respondent's non-compliance with the Right-to-Know Law, 65 P.S. §§ 67.101–67.3104, further exacerbating the Permitting Process's lack of transparency, contributing to the lack of meaningful administrative review and the denial of due process to permit applicants, and further rendering the Permitting Process arbitrary, capricious, and unreasonable, and lacking the force of law.

28. The Respondent has refused to release the identities or even the qualifications of the individuals who scored the applications as part of the Permitting Process, in plain violation of the public's interest in the performance of public officials, thus the Permitting Process is inherently flawed and may have been

infected by bias and favoritism, further rendering all Respondent actions in connection with the Permitting Process arbitrary, capricious, and unreasonable, and lacking the force of law.

29. For the reasons that follow, Petitioner respectfully submits that the Respondent abused its discretion, acted *ultra vires*, arbitrarily, capriciously, and unreasonably, and otherwise failed to lawfully interpret and apply the Act and Temporary Regulations by subjecting all medical marijuana permit applicants to a secretive, inequitable, and unconstitutional Permitting Process, the entirety of which, including the prior award of Grower/Processor Permits and Dispensary Permits, should now be invalidated by this Court.

COUNT I

THE RESPONDENT HAS DEPRIVED PETITIONER AND ALL APPLICANTS OF THEIR FUNDAMENTAL CONSTITUTIONAL DUE PROCESS RIGHTS BY ENGAGING IN A SECRETIVE PERMITTING PROCESS THAT PRECLUDES ANY FAIR AND MEANINGFUL ADMINISTRATIVE REVIEW OF THEIR DECISIONS

30. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

31. The Act provides that the provisions of the Pennsylvania Administrative Procedure Act, 2 Pa. C. S., "apply to all actions of the department under this act constituting an adjudication as defined in 2 Pa. C. S. § 101 (relating to definitions)." 35 P.S. § 10231.1101.

32. The Temporary Regulations further provide:

> (a) The Department will provide written notice of denial to an applicant.
>
> (b) An applicant may request a debriefing from the Department within 30 days from the date of notice of denial. The debriefing will be limited to a discussion of the applicant's permit application.
>
> (c) The applicant may not obtain the names or any other information relating to persons reviewing applications, including a reviewer's individual application reviews.
>
> (d) The applicant may appeal a notice of denial under 2 Pa.C.S. Chapter 5 (relating to practice and procedure).
>
> 28 Pa. Code § 1141.35.

33. When entitled to administrative review, the fundamental principle of due process requires that there be a fair trial before an impartial tribunal. *Georgia-Pac. Corp. v. City of Reading Comm'n on Human Relations*, 585 A.2d 1166, 1169 (Pa. Cmwlth. Ct. 1991) (citing *Montgomery Township v. Bureau of Social Security for Public Employees,* 449 A.2d 841 (Pa. Cmwlth. Ct. 1982)).

34. Petitioner and at least one hundred forty (140) other applicants have already filed administrative appeals challenging the denial of their medical marijuana Grower/Processor Permit and/or Dispensary Permit applications in accordance with the above provisions and with the reasonable expectation that they would receive a fair trial on the merits of their appellate papers before an impartial tribunal.

35. However, due to the lack of transparency and secretive, opaque manner in which the Respondent has carried out the illusory Permitting Process, no applicant can obtain fair and meaningful administrative review of a permit application denial, nor will meaningful administrative review be possible when the Respondent utilizes the same Permitting Process to issue additional permits in the future.

36. As a result, the Respondent has deliberately and unlawfully deprived Petitioner and all applicants of their constitutional right to due process by carrying out a secretive and arbitrary Permitting Process entirely inconsistent with the Commonwealth's laws and principles governing the procurement of government licenses and/or permits, such as, for example, the Procurement Code, 62 Pa. C.S.A. § 101 *et seq.*, and Race Horse and Gaming Act, (hereinafter, "Gaming Act"), 4 Pa. C.S.A. § 1101 *et seq.*

A. The Respondent Has Consistently and Deliberately Withheld Scoring Information to Deprive All Medical Marijuana Permit Applicants of Meaningful Administrative Review.

37. From the outset, the Respondent has demonstrated a commitment to a lack of transparency, providing almost no information about how applications would be scored in connection with the Permitting Process, thereby depriving applicants of proper due process by way of a fair and meaningful administrative review.

38. While the Act and Temporary Regulations set forth certain criteria and a scorecard and scoring rubric were published on the Respondent's website that lists

scoring categories and total possible points,[3] it is wholly unclear what criteria, standards, and scales were used to arrive at the scores for each category.

39. For example, the scoring rubric made available to applicants assigned fifty (50) of one thousand (1000) points to a section called "Attachment E Personal Identification."

40. This section required applicants to provide a photo identification and resume for each principal, employee, financial backer, and operator.

41. Upon review of the scores returned by the Respondent, it is apparent that no single applicant got all fifty (50) points and no applicant earned zero (0) points. Moreover, applicants with the same information in Attachment E received different scores.

42. This suggests: (1) that the mere provision of photo identifications and resumes was not enough for the Respondent and that Respondent had a secret rubric by which it scored this attachment; and (2) that no single applicant proved the identity of its financial backers, principals, employees, or operators to the satisfaction of the Respondent.

[3] A true and correct copy of the scoring cards is attached hereto as Exhibit A. These documents have already been described by some as "arbitrary and inconsistent." Wendy Saltzman, "Controversy around Pennsylvania's medical marijuana permits," June 30, 2017, http://6abc.com/health/controversy-around-pa-medical-marijuana-permits/2168348/.

43. The Respondent has done nothing to explain this and other bizarre scoring issues, claiming only that the entire scoring process is within their sole discretion to run and their decisions unchallengeable.

44. Thus, an applicant seeking to challenge their score on this point is left to simply guess the standard by which their materials were judged, and guess as to what *more* the Respondent needed to award all fifty (50) points.

45. Such a result defies logic and renders illusory the statutory administrative review process guaranteed to Applicants by the Act and Temporary Regulations. 35 P.S. § 10231.1101; 28 Pa. Code § 1141.35.

46. Because only the Respondent knows the information submitted by applicants and what criteria and standards were applied, any applicant appealing a denial of a permit or any applicant that may appeal a permit denial in the future is at a material disadvantage and therefore subject to an inherently unfair administrative review process in violation of their due process rights and well-established Pennsylvania law. *See, e.g.*, *Georgia-Pac. Corp.*, 585 A.2d at 1169; *Montgomery Township*, 449 A.2d at 841.

47. Simply put, no applicant understands how or why they scored a certain score in any category,[4] and when challenged by way of administrative appeal, the Respondent has, to date, utterly refused to explain or defend its scoring decisions.

48. In fact, when responding to the 140+ administrative appeals filed against the Respondent as a result of the flawed and unconstitutional Permitting Process, the Respondent has doubled down on its commitment to a lack of transparency and the position that it need not articulate a rational and lawful basis for selecting winning applicants because Respondent claims that selecting applicants is its sole and exclusive responsibility.

49. By way of example, in its Answer to Petitioner's Dispensary Appeal Docket No. MM-17-096 D, the Respondent raised a New Matter asserting the following argument:

> The evaluation of the content of [an] Appellant's Application for compliance with the Act and/or the temporary regulations against the criteria for the issuance of dispensary permits in the Act and temporary regulations, and the granting or denial of such permits pursuant thereto, is the sole and exclusive responsibility of the Office and is accomplished in the sole exercise of the discretion of the Office as conferred by the General Assembly to interpret and implement the Act, and in compliance with the temporary regulations.
>
> . . .

[4] *See, e.g.*, Wendy Saltzman, "Controversy around Pennsylvania's medical marijuana permits," June 30, 2017, http://6abc.com/health/controversy-around-pa-medical-marijuana-permits/2168348/ ("So how were the winning growers chosen? The problem is . . . no one really knows. 'They put the cone of silence on the decision making process . . . .'").

> Appellant's self-serving declarations of compliance with the requirements for application criteria, the manner in which Application criteria should be evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application, including any self-hypothesized scoring that Appellant avers should have been assigned to its Application, *are deserving of no weight or consideration by the Secretary as they are improper grounds for Appellant's appeal of the scoring of its Application, and otherwise attempts to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the scoring and denial of permits pursuant to [the Act and temporary regulations].*[5]

50. In other words, the Respondent's position is that because Respondent has the sole authority to score applications, Respondent *is not required* to explain *how* applications were scored. This fundamentally flawed and unlawful position is inconsistent with decades of administrative law.

51. Given that: (i) the Respondent has released almost no information about how it scored individual categories; (ii) the Respondent contends during administrative review proceedings that it does not matter how it scored the categories; and (iii) any attempt by any appellant to question a particular score in a particular category is "deserving of no weight or consideration" as grounds for an appeal, the Respondent has made it abundantly clear it has no intention of allowing fair and meaningful administrative review of permit denials, in clear contravention

[5] Office's Answer to Appeal Docket No. MM 17-096 D at ¶¶ 107-110 (emphasis supplied). A true and correct copy of the Office's Answer to Appeal Docket No. MM 17-096 D is attached hereto as Exhibit B.

of the Act, 35 P.S. § 10231.1101, the Temporary Regulations, 28 Pa. Code § 1141.35, and the constitutional due process rights of the medical marijuana permit applicants.

B. The Permitting Process Plainly Contravenes Established Pennsylvania Law Governing the Procurement of Public Licenses or Contracts.

52. In addition to violating due process, the Act, and Temporary Regulations, the Permitting Process is entirely inconsistent with and plainly contravenes Pennsylvania law with respect to the procurement of government licenses or contracts.

53. For example, the Procurement Code establishes a number of procedural protections and substantive rules to ensure that government contracts are awarded fairly to the lowest responsible bidder. *See, e.g.*, 62 Pa. C.S.A. § 512(a) ("Contracts shall be awarded by competitive sealed bidding . . ."); § 512(b) ("an invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement."); § 512(g) (requiring that a contract be awarded to the lowest responsible bidder).

54. These disclosures permit all public license and contract applicants to fairly and adequately review a contract award. For example, if an applicant bid too high for steel, the applicant will know it. If an applicant is disqualified for missing a critical term, the applicant will be able to understand *why* it was not selected.

55. Thus, while the Commonwealth agencies who make an award pursuant to the Procurement Code are required to include a procurement description along with all contractual terms and conditions applicable to the procurement, 62 Pa. C.S.A. § 512(b), the Respondent has undertaken a process whereby only the government agency knows the *true* terms and conditions applicable to the award of a medical marijuana Grower/Processor Permit and/or Dispensary Permit, leaving applicants who were not selected with no fair and meaningful recourse to challenge the rejection of their applications.

C. The Respondent Has Failed to Score Applications Fairly, Objectively, and Consistently.

56. To reiterate, the applicants for a medical marijuana permit are left to offer guesses as to the Respondent's reasoning for scoring certain categories and applications—which are sometimes expressed in scores that are mysteriously scored to the tenth of a point and sometimes scored to a hundredth of a point, resulting in inconsistent and inaccurate final total scores for certain applicants.

57. Not surprisingly, given the lack of transparency and uncertainty in Respondent's Permitting Process, the Permitting Process has resulted in inconsistent, arbitrary, and mysterious application scores.

58. By way of example, Petitioner submitted two (2) dispensary applications on March 20, 2017.

59. The only difference between the applications was the real estate identified for the dispensary locations, while all other portions of the applications were identical.

60. Despite the fact that the applications were *identical* other than the real estate identified in each application, the Respondent illogically, inconsistently, and arbitrarily scored the applications differently.

61. Identical sections of the applications received different scores as set forth below:

Section	Application 1	Application 2
Operational Timetable	74	75
Transportation of Medical Marijuana	14.60	15.40
Storage of Medical Marijuana	28.00	27.20
Labeling of Medical Marijuana	17.20	18.00
Diversion Prevention	28.40	29.20
Sanitation and Safety	26.00	25.20
Business History & Capacity to Operate	56.00	55.20
Capital Requirements	61.80	60.60
Community Impact	43.00	38.00
Site & Facility Plan	35.80	35.40
Personal Identification	31.40	36.40

62. In response to complaints from applicants, the Respondent has asserted that the applications were not scored against one another.[6]

[6] *Id.* at ¶ 110.

63. However, even if the applicants were not scored against one another, one of the largest point differentials of the Petitioner's applications came from the "Personal Identification" category, which was not required to include a narrative or any other specific information.

64. Although Petitioner's two (2) applications responded to the "Personal Identification category with identical PDF files that included: (1) personal identification; and (2) resumes for every principal and financial backer of the applicant, the Respondent arbitrarily scored the applications five (5) points differently.

65. Thus, two (2) of Respondent's scorers reviewed the *exact same* set of documents and came to materially different opinions as to the sufficiency of the resumes and photo identifications, despite the only published requirement being to provide the requested items.

66. The "Capital Requirements" section, worth seventy-five (75) points, was also scored in an equally mysterious and arbitrary manner.

67. The Act requires that an applicant for a dispensary application demonstrate they have "at least $150,000 in capital, which must be on deposit with a financial institution." 35 P.S. 10231.607(1).

68. The application instructions further require that applicants: "[p]rovide a summary of your available capital and an estimated spending plan to be used for

you to become operational within six months from the date of issuance of the Permit."[7]

69. In its application, Petitioner demonstrated that it had raised a total of $15,600,000 in capital, of which $7,287,500.00 was on deposit in cash in a Wells Fargo account.

70. Given the minimum requirement of $150,000.00 cash on hand, Petitioner showed competent evidence that it *far* exceeded the Act's capital requirements, with 48.5 times the required amount of cash immediately available and 104 times the required amount of cash committed to the project.

71. Because the Legislature set an exact dollar figure for capital requirements, it is fair to assume that an applicant that met or exceeded this requirement (i.e., demonstrated available capital in excess of $150,000.00) would be entitled to all of the points for this section.

72. However, despite exceeding this minimum capital requirement by such a vast multiple, Petitioner did not score all the available points for this section.

73. Petitioner therefore assumed the alternative—that the Respondent had set a scale based upon the most qualified applicants (i.e., those with the most capital) and then scaled points from this.

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[7] The application instructions are available on the Department's website at: http://www.health.pa.gov/My%20Health/Diseases%20and%20Conditions/M-P/MedicalMarijuana/Pages/Growers-Processors.aspx#.WZSHHoWcGmQ.

74. If this were the case, there would be a top candidate that would have been awarded one hundred percent (100%) of the points and then the remaining applicants would be scored on a scale relative to this score.

75. However, upon review of the available scores for all applicants, not a single applicant scored one hundred percent (100%) of the available points in the capital requirements category.

76. Thus, as in the case of personal identification, it appears that the Respondent was—inexplicably— not satisfied with the capital commitments of any single applicant and that it must have had some internal standard for available capital that no applicant could meet.

77. While entirely illogical and unfair from the applicants' perspective, this is not necessarily surprising given that the Respondent has asserted the following as a defense during the administrative review of its action:

> Comparison of the scores of other applicants referenced by Appellant in the same or different counties is of no moment to the merits of Appellant's appeal; applications were not scored against each other, but rather were individually scored based on the information an applicant provided and reviewed in the discretion of the Office in accordance with the criteria of the Act, the temporary regulations, and the Instructions . . . [8]

78. Thus, only two (2) results are possible that explain why no applicant scored one hundred percent (100%) of the available points in the capital

[8] *See* Exhibit B at ¶ 110.

requirements category: (a) there was a target of available capital secretly created by the scoring committee and not set forth in the Act or Temporary Regulations; or (b) the scoring was in defiance of the Act's requirements, and thus completely arbitrary.

79. If the Respondent utilized a secret, internal scale that no applicant met, this would render the entirety of the Permitting Process arbitrary, unreasonable and capricious, as the Legislature considered the issue of required capital and passed a law—binding on the Respondent—that the minimum required capital was $150,000.00.

80. By apparently imposing a vastly greater requirement on this issue than set forth in the Act, the Respondent acted arbitrarily, capriciously, and unreasonably, and *ultra vires*.

81. Yet another example of the Respondent's arbitrary and unreasonable systemic scoring of the medical marijuana applications can be seen in the Respondent's scoring of Section 21 – "Quality Control and Testing for Potential Contamination" of the Grower/Processor applications.

82. This section asked all medical marijuana Grower/Processor applicants to respond to a single yes or no question: "[b]y checking "Yes," you affirm that quality control measures and testing efforts must be in place to track active ingredients (THC and CBD) and potential contamination of medical marijuana products."

83. Applicants were only required to check "yes" or "no" in response to this question, and there was no request for a narrative or supporting documentation.

84. Nevertheless, a review of the published scores shows that scoring for this category ranged from a low of five (5) points to a high of forty-one (41) points.

85. The Respondent has released no indication or guidance that explains how the Respondent scored a "yes or no" question on a zero (0) – fifty (50) scale.

86. Instead, applicants are left to guess as to how the Respondent could possibly have scored applicants from five (5) to forty-one (41) points based upon the simple "X" placed on a box on the application.

87. By utilizing a secret, internal scale that no applicant could have possibly known or understood, Respondent acted arbitrarily, capriciously, and unreasonably, rendering the entirety of the Permitting Process invalid.

88. As set forth in the preceding paragraphs, because the Respondent utilized a Permitting Process that lacked transparency and utilized arbitrary scoring based upon standards known only to the Respondent, any applicant that appealed their denial of a permit or any applicant that may appeal a permit denial in the future is at a material disadvantage in the administrative review process and therefore cannot obtain a fair hearing in violation of their basic right to constitutional due process.

89. The Respondent has expressed a complete disregard for this unfairness and violation of statutory and constitutional rights, and indeed has reiterated in its answers to administrative appeals that no applicant has the right to the information that would allow them to fairly and meaningfully challenge their score or essentially any aspect of the Permitting Process.

90. The Permitting Process plainly ignores prior precedent of this Commonwealth designed to ensure fairness to all applicants including, without limitation, those set forth in the Procurement Code and Gaming Act which each provide meaningful procedures for challenging the denial of a contract or license. 62 Pa. C.S.A. § 1711.14 (establishing a fair process by which a bidder may challenge its denial of the award of a government contact); 4 Pa. C.S.A. § 1205 (requiring that prior to awarding a gaming license, the Gaming Control Board hold a fair hearing consistent with fundamental due process).

91. Because applicants cannot meaningfully challenge the denial of a permit, Respondent's Permitting Process is unconstitutional, inherently inequitable, and all Respondent's actions in connection with the Permitting Process must be deemed unlawful, *ultra vires*, and arbitrary, capricious, and unreasonable.

92. As a result, the Permitting Process should be invalidated by this Court, the awarded permits rescinded, and any further issuance of additional permits stayed until the Respondent commits to a lawful, transparent Permitting Process to be

administered in accordance with the requirements of the Act and Temporary Regulations.

COUNT II

RESPONDENT ACTED *ULTRA VIRES* IN WAIVING CERTAIN STATUTORY AND REGULATORY REQUIREMENTS AND THEN ARBITRARILY, CAPRICIOUSLY, AND UNREASONABLY IN STRICTLY ENFORCING OTHERS.

A. Respondent Unlawfully Waived Certain Legislative and Regulatory Requirements to the Benefit of Some, but Not All, Permit Applicants.

93. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

94. Among its requirements, the Act mandates a criminal history background check as follows:

> A criminal history record check. Medical marijuana organizations applying for a permit shall submit fingerprints of principals, financial backers, operators and employees to the Pennsylvania State Police for the purpose of obtaining criminal history record checks and the Pennsylvania State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the principals, financial backers, operators and employees and obtaining a current record of any criminal arrests and convictions. Any criminal history record information relating to principals, financial backers, operators and employees obtained under this section by the department may be interpreted and used by the department only to determine the principal's, financial backer's, operator's and employee's character, fitness and suitability to serve as a principal, financial backer, operator and employee under this act. This paragraph shall not apply to an owner of securities in a publicly traded corporation if the department determines that the owner of the securities is not

> substantially involved in the activities of the medical marijuana organization.
>
> 35 P.S. § 10231.602.

95. The Act vests no discretion in the Respondent to waive this requirement for any applicant for a Grower/Processor Permit or Dispensary Permit.

96. Nevertheless, the Respondent unilaterally waived this statutorily mandated requirement for this part of the Permitting Process after failing to create an operational third-party fingerprinting portal by the time the applications were due.

97. The waiver of this statutorily-required criminal history background check was unceremoniously posted on the Respondent's website on March 7, 2017: "For Phase One, [the Department] will not require applicants to include a fingerprint-based criminal history background check."[9]

98. Instead of actually obtaining the background checks that the Legislature had deemed essential to the preliminary review of applications, applicants were instructed by the Respondent to check "yes" that they had completed those checks regardless of whether they had actually completed them in compliance with the Act.

99. By waiving the fingerprinting requirement, the Respondent materially violated the statutorily-proscribed Permitting Process in a manner that significantly jeopardizes the safety and integrity of Pennsylvania's Medical Marijuana Program.

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[9] A true and correct copy of the notice issued by the Department dated March 7, 2017 is attached hereto as Exhibit C.

100. In fact, Respondent awarded a Grower/Processor Permit to an applicant, Pennsylvania Medical Solutions (hereinafter "PMS"), whose parent company and affiliates are currently under federal investigation for unlawfully transporting over twelve (12) pounds of marijuana worth more than $500,000.00 from Minnesota to New York.

101. PMS's parent and affiliate companies also had their Maryland licenses revoked for failing to comply with Maryland's laws, while Maryland regulators determined there was a high likelihood PMS's parent and affiliates would divert marijuana.

102. Lastly, several executives with PMS's parent company and affiliates have been charged with felonies, and authorities in Minnesota and New York are considering additional charges.[10]

103. The Respondent's waiver of the fingerprinting requirement was not a ministerial decision, but was in-fact a dangerous and substantial departure from statutory requirements, beyond the power of the Respondent, and only further invalidates the entirety of the Permitting Process.

104. Further, the Temporary Regulations require that an application must be considered "not complete" and should be "rejected" if it failed to include "tax

[10] "Philly 420: Medical cannabis grower with Pa. permit faces investigations in other states," July 13, 2017, http://www.philly.com/philly/business/cannabis/medical-cannabis-grower-with-pa-permit-faces-investigations-in-other-states-20170713.html.

clearance certificates issued by the Department of Revenue." 28 Pa. Code § 1141.27(c)(2).

105. On February 28, 2017, the Respondent again failed to enforce its own regulation and waived this application requirement by posting notice on its website because the Department of Revenue did not permit the issuance of a tax clearance certificate for this purpose.[11]

106. The Temporary Regulations also provide that: "[a]n applicant may request a debriefing from the Department within 30 days from the date of notice of denial. The debriefing will be limited to a discussion of the applicant's permit application." 28 Pa. Code § 1141.35(b).

107. Petitioner has submitted requests to the Respondent for a debriefing with respect to its Grower/Processor and Dispensary Permit applications, but thus far has not received a response, in violation of Petitioner's regulatory rights and further demonstrating that the Respondent is not adhering to its own regulations.

108. The blatant disregard and failure to strictly enforce certain statutory and regulatory requirements suggests the Respondent was willing to jeopardize the integrity of the Permitting Process and safety of the public in order to meet fabricated Department of Health deadlines.

[11] A true and correct copy of the notice issued by the Department dated February 28, 2017 is attached hereto as Exhibit D.

B. Respondent Strictly and Arbitrarily Enforced Other Statutory and Regulatory Requirements to the Detriment of Some, but Not All, Applicants.

109. While the Respondent ignored or waived certain requirements in some instances, in other instances, the Respondent arbitrarily insisted on stringent enforcement of other requirements imposed by the Act and Temporary Regulations, resulting in irreparable harm to Petitioner and other similarly-situated applicants who did not benefit from the Respondent's lenient application or non-enforcement of other statutory and regulatory requirements.

110. In general, agency action is arbitrary and capricious if the agency offers insufficient reasons for treating similar situations differently. *Alpha Painting & Construction Co. Inc. v. Delaware River Port Authority of Pennsylvania and New Jersey*, 853 F.3d 671, 686 (3d Cir. 2017) (citing *Nazareth Hosp. v. Sec'y U.S. Dep't of Health & Human Servs.*, 747 F.3d 172, 179–80 (3d Cir. 2014)).

111. If an agency makes an exception in one case, then it must either make an exception in a similar case or point to a relevant distinction between the two (2) cases. *Id.* (citing *Muwekma Ohlone Tribe v. Salazar,* 708 F.3d 209, 216 (D.C. Cir. 2013) (internal quotations and citations omitted).

112. Here, Respondent treated like applicants differently, and has refused to offer any explanation whatsoever for this obvious disparate treatment.

113. For example, one applicant's entire application was rejected for failing to check a single "yes" or "no" box regarding whether the applicant would provide Workers' Compensation to its employees, despite the applicant checking in another area that it agreed to abide by all applicable laws, one of which is Workers' Compensation insurance.[12]

114. The Respondent also permitted some applications to be submitted late but not others, as detailed below.

115. During a press conference on April 25, 2017, the Respondent announced that there had been numerous issues with applicants experiencing technical issues with submitting their applications.

116. Mr. John Collins, speaking for the Respondent, indicated that at least one applicant was permitted to resubmit weeks after the deadline because the application package had been destroyed in the mail.[13]

117. In contrast, other applicants, such as Petitioner, were not permitted to resubmit one missing section of twenty-six (26) attachments after the deadline and

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[12] Wallace McKevely, "Will Pa.'s medical marijuana industry get mired in legal battles?", July 21, 2017 http://www.pennlive.com/news/2017/07/medical_marijuana_legal_wrangl.html.

[13] Schmitt, Ben, "Pennsylvania Wades Through Medical Marijuana Permit Applications," Trib-Live, April 26, 2017; *see also* McKelvey, Wallace, "Hundreds Vie for a Stake in Pa. 's NewMedical Marijuana Industry," Penn Live, April 26, 2017 ("John Collins ... said one applicant was given permission to submit their materials again because they were able to prove their application was lost or damaged in the mail.").

despite electronic and unrefuted proof that the missing section had not been altered after the deadline.[14]

118. It is arbitrary, capricious, and unreasonable for an applicant with potential undisclosed connections to Federal criminal probes to benefit from a lenient interpretation of application completeness (i.e., the requirement of background checks with applications) that go to the heart of the actual qualifications of permittees, while others, like Petitioner, were disqualified based upon a stringent application of related statutory and regulatory requirements that have nothing to do with the selection of the most qualified permittees.

119. Perhaps most egregiously, following the award of Grower/Processor Permits and Dispensary Permits, the Respondent has allowed some, but not all, selected applicants to relocate their physical dispensary sites, utterly negating a huge portion of the application and scoring process.

120. The medical marijuana Dispensary Permit applications allocated one hundred (100) points for "Community Impact" and an additional fifty (50) points for "Site and Facility Plan."[15] These one hundred fifty (150) points accounted for fifteen percent (15%) of an applicant's total score.

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[14] A true and correct copy of Petitioner's Notice of Rejection is attached here to as Exhibit E.
[15] *See* Exhibit A – Sample Scorecards.

121. The Respondent has admitted that applications were not scored against one another, thus applicant scores for this significant category were supposed to be independently and objectively reviewed based solely upon the criteria in the Act and Temporary Regulations.

122. Accordingly, in July 2017, when GuadCo LLC (hereinafter "GuadCo"), an applicant awarded a Dispensary Permit, attempted to relocate its dispensary location from the City of Bethlehem to a different site in Bethlehem Township, Respondent denied this request, stating that the dispensary must be opened at the address listed on GuadCo's application.[16]

123. April Hutcheson, a spokeswoman for Respondent, stated that "no licensee can apply to move a dispensary until the health department deems it operational at the location it identified in its application."[17]

124. However, less than two (2) months later, the Respondent seemingly reversed this position when it allowed two (2) other Dispensary Permit recipients, Franklin Biosciences-Penn LLC (hereinafter "Franklin"), and Terravida Holistic

[16] Andrew Wagaman, "State: Marijuana dispensary must open in Bethlehem, not Bethlehem Township," Morning Call, July 17, 2017, www.mcall.com/business/healthcare/mc-biz-bethlehem-marijuana-dispensary-issues-20170714-story.html
[17] *Id.*

Center (hereinafter "Terravida") to relocate from Muhlenberg Township and East Mount Airy, Philadelphia, respectively.[18]

125. Other applicants, such as AES Compassionate Care (hereinafter "AES"), also intend to relocate their dispensary locations in light of local opposition or the failure to obtain necessary local variances.[19]

126. In allowing certain applicants to relocate their medical marijuana dispensary locations, the Respondent is utterly and arbitrarily negating an entire one hundred fifty (150) points, or fifteen percent (15%), of the applicants' Dispensary Permit application.

127. Further, as with other statutory, regulatory, and application requirements, the Respondent is again treating like applicants differently in allowing certain applicants to relocate, such as Franklin and Terravida, while forcing other applicants, such as GuadCo, to remain at the same location.

128. Because the Respondent waived certain legislative, regulatory, and application requirements for some applicants but not all, made exceptions for certain applicants but not others, and ultimately treated like applicants differently, the

[18] Sam Wood, "Two more marijuana dispensaries forced to find new sites," Philly.com, Sept. 6, 2017, http://www.philly.com/philly/business/cannabis/two-more-marijuana-dispensaries-forced-to-find-new-sites-20170905.html.
[19] *Id.*

Respondent has acted *ultra vires*, arbitrarily, capriciously, and unreasonably, rendering the Permitting Process unlawful.

129. Accordingly, the Permitting Process should be invalidated by this Court, the awarded permits rescinded, and any further issuance of additional permits stayed until the Respondent commits to a lawful, transparent Permitting Process to be administered fairly and consistently in accordance with the requirements of the Act and Temporary Regulations.

COUNT III

RESPONDENT'S PERMITTING PROCESS VIOLATED THE REQUIREMENTS OF THE RIGHT-TO-KNOW LAW BECAUSE THE PUBLICLY RELEASED APPLICATIONS CONTAIN UNLAWFUL REDACTIONS.

130. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

131. The Temporary Regulations address the confidentiality of applications and other records submitted pursuant to the Act:

> (a) The following records are public records and are subject to disclosure under the Right-to-Know Law (65 P.S. §§ 67.101--67.3104):
>
> (1) An application submitted under the act, except to the extent that the application contains any of the information listed in subsection (b).
>
> (2) The name, business address and medical credentials of a practitioner.

(3) Information regarding penalties or other disciplinary actions taken against a permittee by the Department for a violation of the act.

28 Pa. Code § 1141.22(a).

132. Subsection B lists information that is to be maintained as confidential under the Act and Temporary Regulations. 28 Pa. Code § 1141.22(b).

133. Pursuant to 28 Pa. Code § 1141.22(c), the Respondent asked applicants to submit their own redactions of material they considered to be proprietary information and/or trade secrets, and the Respondent then added redactions of such elements as Social Security numbers, bank routing numbers, personal phone numbers, and information about the security plans.

134. Accordingly, the applications, once released in redacted form, were supposed to adhere to state law.

135. Although applications submitted as part of the Permitting Process are intended to be public records pursuant to the Act and the Respondent's own regulations, the redacted applications released by the Respondent were not reviewed for compliance with the Right-to-Know Law (hereinafter "RTKL"), 65 P.S. §§ 67.101–67.3104, thereby creating additional confusion and frustration for applicants and lessening the possibility for fair and meaningful administrative review.

136. Pursuant to the RTKL, Commonwealth agencies, and not applicants or contractors, must determine what information within a public record is confidential and not subject to public release.

137. As a result and as further detailed below, certain publicly released applications are almost entirely redacted and others are only minimally redacted in contravention of the RTKL.

138. One applicant, Columbia Care Pennsylvania, redacted hardly any information in its application, while another applicant, Mission Pennsylvania II, redacted its own name, and a third applicant, Healing II LLC in Philadelphia – redacted nearly the entirety of its application.[20]

139. The Respondent's failure to comply with the RTKL has already led to one appeal to the Office of Open Records, highlighting other examples of improperly redacted information in the publicly released applications, including:

- The health department's logo
- Application questions and page numbers
- Applicant signatures
- Business name, address and phone numbers
- Proximity to health care facilities
- Community impact statements[21]

[20] Wallace McKevely, "Will Pa.'s medical marijuana industry get mired in legal battles?", July 21, 2017 http://www.pennlive.com/news/2017/07/medical_marijuana_legal_wrangl.html.
[21] See Office of Open Records Appeal #AP 2017-1455 – Reading Eagle Company v. Department of Health. A true and correct copy of this appeal is attached here to as Exhibit F.

140. The Respondents failure to comply with the RTKL has allowed it to largely escape public scrutiny for awarding a Grower/Processor Permit to an applicant, PMS, whose parent company and affiliates are currently under Federal investigation for unlawfully transporting over twelve (12) pounds of marijuana worth more than $500,000.00 from Minnesota to New York.

141. Further, the Respondent's failure to adhere to its own Temporary Regulations and non-compliance with the RTKL further exacerbates the Permitting Process's lack of transparency, contributes to the lack of meaningful administrative review and the denial of due process to permit applicants, and further renders the Permitting Process arbitrary, capricious, and unreasonable.

142. Accordingly, the Permitting Process should be invalidated by this Court, the awarded permits rescinded, and any further issuance of additional permits stayed until the Respondent commits to a lawful, transparent Permitting Process to be administered in accordance with the requirements of the Act and Temporary Regulations.

COUNT IV

BY FAILING TO DISCLOSE THE IDENTITIES AND QUALIFICATIONS OF THE SCORERS, RESPONDENT'S PERMITTING PROCESS MAY BE INFECTED BY FAVORITISM OR BIAS IN FURTHER VIOLATION OF THE DUE PROCESS RIGHTS OF ALL APPLICANTS.

143. Petitioner hereby incorporates the foregoing Paragraphs as if fully set forth herein.

144. The Respondent has released no information about the identities and qualifications of the individuals or entities that accepted, reviewed, evaluated, and scored the applications (hereinafter "Scorers") as part of the Permitting Process.

145. On July 7, 2017, a RTKL Request (hereinafter the "Request") was submitted to the Department of Health requesting "any and all documents indicating the identities of the individuals, and/or their consultants or independent contractors, who scored or considered the applications for grower/processor permits."

146. On August 14, 2017, the Department of Health issued a final response denying the Request pursuant to 28 Pa. Code § 1141.35(c), which provides: "[t]he applicant may not obtain the names or any other information relating to persons reviewing applications, including a reviewer's individual application reviews."[22]

147. The Act does not authorize the Respondent to keep the identities of the Scorers or their qualifications a secret.

148. Although the Respondent lacks statutory authority to maintain the secrecy of the identities of the Scorers and their qualifications, the Respondent has again dug in and appears committed to this lack of transparency.

149. John Collins, Director of the Office of Medical Marijuana at the Department of Health, has claimed that "the secrecy was essential," and the

[22] A true and correct copy of the Department's final response to the Request is attached hereto as Exhibit G.

Respondent's regulations require "the anonymity of team members to avoid any interference with their work, or influence from outside parties."[23]

150. Notwithstanding these self-serving assertions, because the identities and qualifications of the Scorers are unknown, it is impossible to evaluate whether there were any conflicts of interest between the Scorers and applicants, and whether favoritism or bias infected the entirety of the Permitting Process in further violation of the due process rights of all applicants. *See, e.g.*, *Kuszyk v. Zoning Hearing Bd. of Amity Twp.*, 834 A.2d 661, 665 (Pa. Cmwlth. Ct. 2003) (noting that "the mere potential for bias or the appearance of non-objectivity may be sufficient to constitute a violation of the right to due process).

151. In addition, because the identities of the Scorers are unknown, it is unclear whether the Scorers were qualified to evaluate certain categories and criteria, in clear contravention of the public's legitimate interest in the qualifications and performance of public officials. *See, e.g.*, *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966) (discussing "the general public interest in the qualifications and performance of all government employees" in the context of slander and libel suits).

[23] Wendy Saltzman, "Controversy around Pennsylvania's medical marijuana permits," June 30, 2017, http://6abc.com/health/controversy-around-pa-medical-marijuana-permits/2168348/.

152. This has led to widespread confusion and suspicion amongst applicants with regard to the selected applicants.[24]

153. As detailed herein, one (1) inexplicably chosen applicant is affiliated with a company accused of illegally transporting cannabis across state lines.[25]

154. Given the foregoing, there is clearly a potential for bias and an appearance of non-objectivity with respect to the entirety of the Permitting Process.

155. Further, it is arbitrary, capricious, and unreasonable for the Respondent to assign an individual without proper training or qualifications to evaluate certain categories of scoring, such as capital requirements.

156. As detailed herein, Respondent has inconsistently and illogically scored applications, further creating the appearance of bias and suggesting a lack of objectivity with respect to the entirety of the Permitting Process.

157. Because the identities and qualifications of the Scorers are unknown, Respondent's Permitting Process is inherently flawed as Petitioner is unable to evaluate the qualifications of the Scorer or determine whether there may have been

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[24] Wallace McKevely, "Will Pa.'s medical marijuana industry get mired in legal battles?", July 21, 2017 http://www.pennlive.com/news/2017/07/medical_marijuana_legal_wrangl.html ("The convergence of so much money and power stoked suspicion about the process, at least among those who didn't get in on the industry's ground floor and were primed to challenge the DOH's long-heralded commitment to transparency.").

[25] "Philly 420: Medical cannabis grower with Pa. permit faces investigations in other states," July 13, 2017, http://www.philly.com/philly/business/cannabis/medical-cannabis-grower-with-pa-permit-faces-investigations-in-other-states-20170713.html.

bias and favoritism, rendering all Respondent's actions in connection with the Permitting Process arbitrary, capricious, and unreasonable.

158. As a result, the Permitting Process should be invalidated by this Court, the awarded permits rescinded, and any further issuance of additional permits stayed until the Respondent commits to a lawful, transparent Permitting Process to be administered in accordance with the requirements of the Act and Temporary Regulations.

COUNT V

RESPONDENT'S PERMITTING PROCESS SHOULD BE INVALIDATED IN ITS ENTIRETY AND THE PREVIOUSLY AWARDED PERMITS RESCINDED BECAUSE THEY WERE AWARDED PURSUANT TO AN UNLAWFUL PROCESS.

159. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

160. As set forth above, there are ample reasons that justify the immediate invalidation or, in the alternative, the stay of the Respondent Permitting Process as *ultra vires*, arbitrary, capricious, and unreasonable, and without the full force and effect of law.

161. In the event the Respondent proceeds with granting permits despite the rampant, systemic problems with the Permitting Process, hundreds of rejected applicants, including Petitioner, will experience irreparable harm.

162. The Respondent has previously rejected Petitioner's request for a stay of the Permitting Process in a currently pending, separate administrative appeal. Pa. R.A.P. 1781(a).

163. Therefore, this Court should exercise its discretion to issue an injunction and stay the award of permits and the continuance of the Permitting Process until this action is completed to ensure that the best quality candidates are selected. Pa. R.A.P. 1781(b).

164. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief including an injunction "in the interest of justice and consistent with the usages and principles of law."

165. The standard for obtaining a preliminary injunction pursuant to Pa. R.A.P. 1532 is the same as obtaining an injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 441 (Pa. 1982). Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. Pa. R.A.P. 1532(a).

166. Pennsylvania courts consider the following factors before ordering a preliminary injunction: "(1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury would result from refusing an injunction than from granting it, and, the issuance of the injunction will not substantially harm other interested parties; (3) an

injunction will properly restore the parties to their status as it existed prior to the alleged wrongful conduct; (4) the activity the petitioner seeks to restrain is actionable, the right to relief is clear, and success on the merits is likely; (5) the injunction is reasonably suited to abate the offending activity; and (6) an injunction will not adversely affect the public interest." *Dusman v. Bd. of Directors of Chambersburg Area Sch. Dist.*, 123 A.3d 354, 360 (Pa. Commw. Ct. 2015), *appeal denied*, 635 Pa. 735 (2016) (citations omitted).

167. Here, as set forth herein and in the accompanying Motion for Special Relief, Petitioner meets all of the elements for entering a preliminary injunction.

168. First, in the event that this Court does not invalidate or stay the Permitting Process, all rejected applicants, including Petitioner, will suffer irreparable injury as the first-round of licenses will have been awarded to applicants who are potentially less qualified than the rejected applicants, and Petitioner has no adequate remedy at law to redress this harm.

169. Further, by potentially scoring applications in a manner inconsistent with the requirements in the Act, the Respondent violated the Act and "a violation of [a] statute constitutes irreparable harm." *Markham v. Wolf*, 147 A.3d 1259, 1270 (Pa. Commw. Ct. 2016) (quoting *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317 (Pa. 1947)).

170. Second, greater injury will result from refusing to grant the injunction than granting it because although an injunction may briefly delay the Permitting Process and impact the rights of the selected applicants, the public will ultimately benefit from the highest quality applicants delivering a safe and effective treatment to patients, and where the goal is safety and the public interest, a brief delay to ensure the highest quality applicants are accepted based upon a fair, objectively-applied scoring process is preferable to a result that awards permits to unqualified applicants, such as those with federal criminal connections.

171. Third, an injunction will restore the parties to the original status as it will afford Petitioner and all applicants with a chance to participate in a fair, transparent, and objectively-applied Permitting Process and preclude Respondent from continuing to carry out the flawed and unlawful Permitting Process.

172. Fourth, the Permitting Process is actionable as a Department of Health agency action and enforcement of the Act and Temporary Regulations; Petitioner and all medical marijuana applicants have a clear right to relief as entities denied a medical marijuana Grower/Processor and/or Dispensary Permit; and Petitioner has demonstrated a strong likelihood of success by identifying a significant number of constitutional, statutory, and regulatory violations based upon the numerous examples of arbitrary, capricious and unreasonable decision-making and scoring on the part of the Respondent in carrying out the Permitting Process.

173. Fifth, an injunction is reasonably suited to abate the offending activity because it will result in a halt to the unlawful, arbitrary, capricious, and *ultra vires* Permitting Process.

174. Sixth, an injunction will not adversely affect the public interest because it will allow the Respondent to undertake a new, transparent, and valid Permitting Process that will result in the delivery of safe and effective treatment to patients from the highest qualified applicants.

175. In addition, as provided by the Procurement Code, because any permits that have been awarded were awarded contrary to law and applicants who were not selected lacked any meaningful administrative remedy, the previously awarded permits should be rescinded. 62 P.A. C.S.A. § 1711.2.

176. For these reasons, this Court should invalidate the Permitting Process, rescind the awarded permits, and stay any further issuance of additional permits until the Respondent commits to a lawful, transparent Permitting Process to be administered in accordance with the requirements of the Act and Temporary Regulations.

REQUESTED RELIEF

A. Declaratory Relief

177. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

178. As set forth in the preceding paragraphs, because the Respondent utilized a Permitting Process that lacked transparency and utilized arbitrary scoring based upon standards known only to the Respondent, any applicant that appealed their denial of a permit or any applicant that may appeal a permit denial in the future is at a material disadvantage in the administrative review process and therefore cannot obtain a fair hearing in violation of their basic right to constitutional due process.

179. Further, because the Respondent waived certain Legislative requirements for some applicants but not all, made exceptions for certain applicants but not others, and ultimately treated like applicants differently, the Respondent acted *ultra vires* and the Permitting Process is arbitrary, capricious, and unreasonable, and lacks the force of law.

180. The Respondent's additional failure to adhere to its own Temporary Regulations and non-compliance with the RTKL further exacerbates the Permitting Process's lack of transparency, contributes to the lack of meaningful administrative review and the denial of due process to permit applicants, and further renders the Permitting Process arbitrary, capricious, and unreasonable.

181. Lastly, because the identities and qualifications of the Scorers are unknown, Respondent's Permitting Process is inherently flawed as Petitioner is unable to evaluate the qualifications of the Scorer or determine whether there may

have been bias and favoritism, rendering all Respondent's actions in connection with the Permitting Process arbitrary, capricious, and unreasonable.

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter judgment in its favor and against the Respondent as follows:

1. Declaring that the Respondent's Permitting Process is arbitrary, capricious, unreasonable and *ultra vires*, and therefore invalid, unconstitutional, ineffective, and without force of law;

2. Declaring that the Respondent has no authority to continue issuing medical marijuana Grower/Processor Permits and Dispensary Permits pursuant to the existing Permitting Process; and

3. Awarding costs and such other and further relief that this Honorable Court deems just and appropriate.

B. Equitable Relief

182. Petitioner incorporates the foregoing Paragraphs as if fully set forth herein.

183. As set forth in the preceding paragraphs, because the Respondent utilized a Permitting Process that lacked transparency and utilized arbitrary scoring based upon standards known only to the Respondent, any applicant that appealed their denial of a permit or any applicant that may appeal a permit denial in the future is at a material disadvantage in the administrative review process and therefore

cannot obtain a fair hearing in violation of their basic right to constitutional due process.

184. Further, because the Respondent waived certain Legislative requirements for some applicants but not all, made exceptions for certain applicants but not others, and ultimately treated like applicants differently, the Respondent acted *ultra vires* and the Permitting Process is arbitrary, capricious, and unreasonable, and lacks the force of law.

185. The Respondent's additional failure to adhere to its own Temporary Regulations and non-compliance with the RTKL further exacerbates the Permitting Process's lack of transparency, contributes to the lack of meaningful administrative review and the denial of due process to permit applicants, and further renders the Permitting Process arbitrary, capricious, and unreasonable.

186. Lastly, because the identities and qualifications of the Scorers are unknown, Respondent's Permitting Process is inherently flawed as Petitioner is unable to evaluate the qualifications of the Scorer or determine whether there may have been bias and favoritism, rendering all Respondent's actions in connection with the Permitting Process arbitrary, capricious, and unreasonable.

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter judgment in its favor and against the Respondent as follows:

1. Preliminarily and permanently enjoining Respondent, its agents, servants, officers, and others from continuing the Permitting Process and issuing additional rounds of permits;

2. Preliminarily and permanently enjoining the applicants who were previously awarded Grower/Processor Permits and Dispensary Permits from continuing the process pending the outcome of this action;

3. Rescinding the previously awarded Grower/Processor Permits and Dispensary Permits; and

4. Awarding costs and such other and further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,

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Attorneys for Petitioner Keystone ReLeaf LLC

VERIFICATION

I, Christian M. Perrucci, am the Managing Member of Keystone ReLeaf LLC. I hereby verify that the statements made in the foregoing **Petition for Review** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

KEYSTONE RELEAF LLC

Dated: September 8, 2017

/s/ Christian M. Perrucci
Christian M. Perrucci

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

EXHIBIT A

ATTACHMENT A

D-1001-17 BHS WELLNESS, LLC		
Dispensary Application Scoring	**Maximum Points per Section**	**Applicant Score**
PART B – Diversity Plan		
3 – Diversity Plan	100	31.00
PART D – Plan of Operation		
8 – Operational Timetable	100	70.40
9 – Employee Qualifications, Description of Duties and Training	50	25.60
10 – Security and Surveillance	100	50.20
11 – Transportation of Medical Marijuana	25	11.80
12 – Storage of Medical Marijuana	50	24.40
13 – Labeling of Medical Marijuana	25	16.40
14 – Inventory Management	50	26.60
15 – Diversion Prevention	50	26.60
16 – Sanitation and Safety	50	28.20
17 – Recordkeeping	50	15.00
PART E – Applicant Organization, Ownership, Control and Tax Status		
19 – Business History and Capacity to Operate	75	36.40
22 – Capital Requirements	75	28.60
PART F – Community Impact		
23 – Community Impact	100	30.00
ATTACHMENTS		
Attachment D: Site and Facility Plan	50	21.40
Attachment E: Personal Identification	50	28.40
TOTAL	1000	471.00

ATTACHMENT A

Applicant ID: GP-1001-17 MedGarden, LLC		
Grower/Processor Application Scoring	**Maximum Points per Section**	**Applicant Score**
PART B – Diversity Plan		
3 – Diversity Plan	100	60.00
PART D – Plan of Operation		
8 – Operational Timetable	50	42.25
9 – Employee Qualifications, Description of Duties and Training	25	18.88
10 – Security and Surveillance	50	37.50
11 – Transportation of Medical Marijuana	25	18.63
12 – Storage of Medical Marijuana	25	18.88
13 – Packaging and Labeling of Medical Marijuana	25	19.88
14 – Inventory Management	25	18.25
15 – Management and Disposal of Medical Marijuana Waste	25	19.13
16 – Diversion Prevention	50	36.38
17 – Growing Practice	50	40.63
18 – Nutrient and Additive Practices	50	39.63
19 – Processing and Extraction	50	40.75
20 – Sanitation and Safety	25	22.63
21 – Quality Control and Testing for Potential Contamination	50	36.63
22 – Recordkeeping	25	20.25
PART E – Applicant Organization, Ownership, Capital and Tax Status		
24 – Business History and Capacity to Operate	75	60.25
27 – Capital Requirements	75	62.25
PART F – Community Impact		
28 – Community Impact	100	28.50
ATTACHMENTS		
Attachment D: Site and Facility Plan	50	35.00
Attachment E: Personal Identification	50	41.88
TOTAL	**1000**	**718.13**

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EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

KEYSTONE RELEAF LLC, **Appellant,** **v.** **PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,** **Appellee.**	**Docket No. MM 17-096 D**

DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA'S ANSWER TO APPELLANT'S NOTICE OF APPEAL

AND NOW comes the Commonwealth of Pennsylvania, Department of Health, Office of Medical Marijuana (hereinafter "Office"), by and through its undersigned legal counsel, and files this Answer to Appellant's Notice of Appeal pursuant to 1 Pa. Code § 35.35.

1. **ADMITTED.**

2. **ADMITTED.**

3. **ADMITTED.**

4. Neither **ADMITTED** nor **DENIED.** The averment states that Appellant objects to the Notice of Denial for reasons that follow in the Notice of Appeal. If a response is required, the averment is **DENIED.**

OFFICE'S ANSWER TO APPELLANT'S NOTICE OF APPEAL

1-4. **ADMITTED.** By way of further answer, the Notice Denying Medical Marijuana Dispensary Permit Application (hereinafter the "Notice") issued by the Office to Appellant on June 29, 2017, documenting denial of Appellant's Medical Marijuana Dispensary Permit Application (hereinafter the "Application" refers to Appellant's request for a permit to operate a

dispensary in Northampton County) speaks for itself and is not subject to any interpretation, limitation or characterization assigned by Appellant.

5. **DENIED**. The averments of paragraph five (5), and specifically Appellant's noted objections to the Notice, are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the averments of paragraph five (5) are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. By way of further answer, the Office properly scored Appellant's Application – and all dispensary permit applications - within the discretion afforded to it by the General Assembly in the Medical Marijuana Act, 35 P.S. §§ 10231.101 – 10231.2110 (hereinafter "Act") and 28 Pa. Code § 1141.34(8) and (9) of the applicable Department of Health temporary regulations, 28 Pa. Code §§ 1141.21-1141.51 (hereinafter "temporary regulations"), and by its interpretation of the Act in the discharge of its statutory obligation pursuant to 35 P.S. § 10231.301(a) to implement and administer the Act; consistent with all provisions of the Act, including specifically, but not limitedly, with the criteria in 35 P.S. § 10231.603(a.1) of the Act, and the temporary regulations, specifically, but not limitedly, including the factors in 28 Pa. Code § 1141.24(b) (relating to medical marijuana regions); and consistent with Section VI (Scoring Methodology and Scoring Rubric) of the Office's Medical Marijuana Organization Permit Application Instructions (hereinafter "Instructions").

By way of further answer, the evaluation of the content of the Application for compliance with the Act and/or the temporary regulations against the criteria for the issuance of dispensary permits and the granting or denial of such permits is the sole and exclusive responsibility of the Office and is accomplished in the sole exercise of the discretion of the Office as conferred by the General Assembly to interpret and implement the Act, and in compliance with the temporary

regulations. *See* 35 P.S. §§ 102311.301(a)(1) (relating to issuance of permits); 10231.603(a) (relating to granting of a permit); *see also* 28 Pa. Code §§ 1141.24(b) (relating to medical marijuana regions); 1141.27 (relating to general requirements for applications); 1141.29 (b) (relating to initial permit applications); 1141.33 (relating to review of initial permit applications); and 1141.34 (relating to denials of permits). Appellant's self-serving declarations of compliance with the requirements for application criteria, the manner in which Application criteria should be evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application are not proper grounds for Appellant's appeal of the scoring of its Application, and otherwise attempts to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the denial of permits pursuant to 28 Pa. Code § 1141.34(8) and (9) and all other provisions of the Act and temporary regulations.

I. FACTUAL BACKGROUND

6-9. **ADMITTED.**

10. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant's total score in the score card appended to the Office's Notice as "Attachment A" pertaining to its request to operate a dispensary in Lehigh County (hereinafter the "Second Application") was 596.20. To the extent Appellant's recitation of its total score is intended to support its contention that the scoring of the Application was improper for any reason, the averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. The responsive averments of paragraph five (5) above are also incorporated herein by reference as if set forth in full.

By way of further answer, all applicants, including Appellant, were evaluated and given a total score. A higher score in one or more individual categories did not outweigh lower scores in other categories, and the total score resulted in the Office's granting of permits. The successful applicant in the County in which Appellant applied who was granted a dispensary permit had a higher total score than Appellant, a fact admitted by Appellant and not in dispute in this Appeal. Moreover, Appellant's challenge to the scoring methodology employed by the Office in the discharge of its statutory responsibility to implement the Act is an improper attempt to usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the review, scoring and denial of permits pursuant to 28 Pa. Code § 1141.34(8) and (9). The Office determined in the exercise of its sole discretion that the issuance of a dispensary permit to Appellant would not be in the best interest of the welfare, health or safety of the citizens of this Commonwealth, *see* 35 P.S. § 10231.603; 28 Pa. Code § 1141.34(9), and the averments of this paragraph, or any other averment of Appellant's Appeal, are insufficient to disturb or overturn such determination on appeal.

11. **ADMITTED.**

12. **DENIED.** Appellant's Applications speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent an answer is deemed necessary, Appellant's Application and Second Application are not identical as they suggest. To the contrary, each Application proposes to operate a dispensary in different locations, with each location situated in a different county. The location of a proposed dispensary is a material element of applications submitted to the Office for its consideration, and not only can, but should according to the Act and the temporary regulations,

impact the scoring of application criteria. The responsive averments of paragraphs five (5) and ten (10) above are also incorporated herein by reference as if set forth in full.

13. **ADMITTED** in part; **DENIED** in part. It is admitted only that the Notice denying Appellant's Second Application was issued by the Office to Appellant on June 29, 2017. That Notice speaks for itself and is not subject to any interpretation, limitation or characterization assigned by Appellant. To the extent the inclusion of reference to Appellant's Second Application is intended to suggest that the scoring of any portion of the Second Application is relevant to the instant appeal, such averments are generally **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

14. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant's total score on its Second Application as noted on the score card appended to the Office's Notice as "Attachment A" was 595.60. To the extent Appellant's recitation of its total score on the Second Application is intended to support its contention that the scoring of the Application was improper for any reason, the averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the scoring of Appellant's Second Application has no bearing on or relevance to the merits of the instant appeal. The responsive averments of paragraph five (5) above are also incorporated herein by reference as if set forth in full.

II. LEGAL ARGUMENT

15. **DENIED**. The averments of paragraph fifteen (15) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

16. **DENIED**. The averments of paragraph sixteen (16) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

17. **DENIED.** The averments of paragraph seventeen (17) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. The responsive averments of paragraphs five (5) and ten (10) above are also incorporated herein by reference as if set forth in full.

18. **DENIED.** The averments of paragraph eighteen (18) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. The responsive averments of paragraphs five (5) and ten (10) above are also incorporated herein by reference as if set forth in full.

19. **DENIED.** The averments of paragraph nineteen (19) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant Application and Second Application speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, Appellant's Application and Second Application are not identical as they suggest. To the contrary, each Application proposes to operate a dispensary in different locations, with each location situated in a different county. The location of a proposed dispensary is a material element of applications submitted to the Office for its consideration, and not only can, but should according to the Act and the temporary regulations, impact the scoring of application criteria. In addition, the scoring of Appellant's Second Application has no bearing on or relevance to the scoring of Appellant's Application, nor the merits of the instant appeal. The responsive averments of paragraphs five (5) and ten (10) above are also incorporated herein by reference as if set forth in full.

20. **DENIED.** The averments of paragraph twenty (20) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. The responsive averments of paragraph nineteen (19) above are incorporated herein by reference as if set forth in full.

21. **DENIED.** The averments of paragraph twenty-one (21) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant Application and Second Application speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, Appellant's self-serving declarations of compliance with the application criteria, the manner in which Application criteria should have been evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application, including any self-hypothesized scoring that Appellant avers should have been assigned to its Application or any specific section thereof, are deserving of no weight or consideration by the Secretary as they are improper grounds for Appellant's appeal of the scoring of its Application, and otherwise constitute improper attempts to substitute its judgment for that of the Office, thereby attempting to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the scoring and denial of permits pursuant to 35 P.S. § 10231.603(a) and 28 Pa. Code § 1141.34(8) and (9) and all other provisions of the Act and temporary regulations. The responsive averments of paragraph nineteen (19) above are incorporated herein by reference as if set forth in full.

22. **DENIED.** The averments of paragraph twenty-two (22) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant's

Application and Second Application speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraphs nineteen (19) and twenty-one (21) above are incorporated herein by reference as if set forth in full.

23. **DENIED.** The averments of paragraph twenty-three (23) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), and twenty-one (21) are incorporated herein by reference as if set forth in full.

24. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** Appellant's speculation as to any position the Office may assert in this appeal is **DENIED** as a conclusion of law to which no responsive pleading is required. By way of further answer, as to the scoring of Appellant's Application, the responsive averments of paragraphs five (5), ten (10), nineteen (19), and twenty-one (21) are incorporated herein by reference as if set forth in full.

25. **DENIED.** Appellant's Application and Second Application, including any Attachments thereto, speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** Appellant's speculation as to the scoring methodology or determinations of the Office are specifically **DENIED**. By way of further answer, Appellant's Application and Second Application are not identical as they suggest. To the contrary, each Application proposes to operate a dispensary in different locations, with each location situated in a different county. The location of a proposed dispensary is a material element of applications submitted to the Office for its consideration, and

not only can, but should according to the Act and the temporary regulations, impact the scoring of application criteria. In addition, the scoring of Appellant's Second Application has no bearing on or relevance to the scoring of Appellant's Application, nor the merits of the instant appeal. The responsive averments of paragraphs five (5), ten (10), nineteen (19), and twenty-one (21) are incorporated herein by reference as if set forth in full.

26. **DENIED**. The averments of paragraph twenty-six (26) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

27. **DENIED**. The averments of paragraph twenty-seven (27) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

28. **DENIED**. The averments of paragraph twenty-eight (28) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. In addition, Appellant's Application and Second Application, including any Attachments thereto, speak for themselves and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraph twenty-five (25) are incorporated herein by reference as if set forth in full. Further, the responsive averments of this paragraph equally apply to footnote 2 indexed to the averments of paragraph twenty-eight (28), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law.

29. **DENIED**. The averments of paragraph twenty-nine (29) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), and twenty-five (25) are incorporated herein by reference as if set forth in full.

30. **DENIED**. The averments of paragraph thirty (30) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

31. **DENIED**. The averments of paragraph thirty-one (31) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

32. **DENIED**. The averments of paragraph thirty-two (32) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**.

33. **DENIED**. The averments of paragraph thirty-three (33) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**.

34. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

35. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of

law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, Appellant's self-serving declarations of having exceeded the application criteria, the manner in which Application criteria should have been evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application, including any self-hypothesized scoring that Appellant avers should have been assigned to its Application or any specific section thereof, are deserving of no weight or consideration by the Secretary as they are improper grounds for Appellant's appeal of the scoring of its Application, and otherwise constitute improper attempts to substitute its judgment for that of the Office, thereby attempting to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the scoring and denial of permits pursuant to 35 P.S. §§ 10231.602 and 10231.603 and 28 Pa. Code § 1141.34(8) and (9) and all other provisions of the Act and temporary regulations.

36. **DENIED**. The averments of paragraph thirty-six (36) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

37. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant' score in the Capital Requirements section of the score card appended to the Office's Notice as "Attachment A" was 61.80. The remaining averments of this paragraph are **DENIED**. Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise

characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

38. **DENIED.** The averments of paragraph thirty-eight (38) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant's Application speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, Appellant's self-serving declarations of compliance with the application criteria, the manner in which Application criteria should have been evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application, including any self-hypothesized scoring that Appellant avers should have been assigned to its Application or any specific section thereof, are deserving of no weight or consideration by the Secretary as they are improper grounds for Appellant's appeal of the scoring of its Application, and otherwise constitute improper attempts to substitute its judgment for that of the Office, thereby attempting to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the scoring and denial of permits pursuant to 35 P.S. §§ 10231.602 and 10231.603 and 28 Pa. Code § 1141.34(8) and (9) and all other provisions of the Act and temporary regulations. By way of further answer, the responsive averments of paragraph ten (10) are incorporated herein by reference as if set forth in full.

39. **DENIED**. The averments of paragraph thirty-nine (39) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the Office properly scored Appellant's Application – and all dispensary permit applications - within the discretion afforded to it by the General Assembly in the Act and 35 P.S. § 10231.603 and 28 Pa. Code § 1141.34(8) and (9) of the temporary regulations, and by its interpretation of the Act in the discharge of its statutory obligation pursuant to § 10231.301(a) to implement and administer the Act; consistent with all provisions of the Act, including specifically, but not limitedly, with the criteria in § 10231.603(a.1) of the Act, and the temporary regulations, specifically, but not limitedly, including the factors in § 1141.24(b) (relating to medical marijuana regions); and consistent with Section VI (Scoring Methodology and Scoring Rubric) of the Instructions.

In addition, all applicants, including Appellant, were evaluated and given a total score. A higher score in one or more individual categories did not outweigh lower scores in other categories, and the total score resulted in the Office's granting of permits. The successful applicant in the County in which Appellant applied who was granted a dispensary permit had a higher total score than Appellant, a fact admitted by Appellant and not in dispute in this Appeal. Comparison of the scores of other applicants referenced by Appellant in the same or different counties is of no moment to the merits of Appellant's appeal; applications were not scored against each other, but rather were individually scored based on the information an applicant provided in the discretion of the Office and in accordance with the criteria of the Act, the temporary regulations, and the Instructions, specifically, but not limitedly, Section VI (Scoring Methodology and Scoring Rubric).

Moreover, Appellant's attempt to self-servingly assess the scoring of other dispensary applications, the merits of any such assessment being specifically denied, is not a proper grounds for Appellant's appeal of the scoring of its Application, and otherwise attempts to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the denial of permits pursuant to 35 P.S. §§ 10231.602 and 10231.603 and 28 Pa. Code § 1141.34(8) and (9). The Office determined in the exercise of its sole discretion that the issuance of a dispensary permit to Appellant would not be in the best interest of the welfare, health or safety of the citizens of this Commonwealth, *see* 35 P.S. § 1023.603; 28 Pa. Code § 1141.34(9), and the averments of this paragraph, or any other averment of Appellant's Appeal, are insufficient to disturb such determination on appeal.

40-41. **DENIED**. The averments of paragraphs forty (40) and forty-one (41) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraph thirty-nine (39) are incorporated herein by reference as if set forth in full.

42. **DENIED**. The averments of paragraphs forty-two (42) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10) and twenty-one (21) are incorporated herein by reference as if set forth in full. The responsive averments of this paragraph equally apply to footnote 5 indexed to the averments of paragraph forty-two (42), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law. In addition, redactions of information made in compliance with the Act, the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 67.3104 (hereinafter "RTKL") and the temporary regulations, 28 Pa. Code § 1141.22, do not constitute a basis for Appellant's

challenge of the scoring of its own Application, and do not material prejudice the ability of Appellant, or any applicant, to appeal the determination of the Office. Additionally, Appellant is required to raise all its objections in its initial Notice of Appeal. Appellant's reservation of rights set forth in footnote 5 is improper and should be denied by the Secretary of Health.

43. **DENIED**. The averments of paragraphs forty-three (43) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10) and twenty-one (21) are incorporated herein by reference as if set forth in full.

44. **DENIED**. The averments of paragraphs forty-four (44) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10) and twenty-one (21) are incorporated herein by reference as if set forth in full.

45. **DENIED**. The averments of paragraphs forty-five (45) are conclusions of law to which no responsive pleading is required. By way of further answer, Appellant's self-serving contention that any portion of its Application was ignored or replaced is irresponsible, not deserving of any consideration by the Secretary, and otherwise specifically **DENIED**. The responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

46. **DENIED**. The averments of paragraph forty-six (46) are conclusions of law to which no responsive pleading is required.

47. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended

to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

48. **ADMITTED**. By way of clarification, up to 50 points are available in the scoring of Attachment E to the Application. Appellant's Application received a score of 31.40 related to Attachment E.

49. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

50. **DENIED**. The averments of paragraph fifty (50) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**.

51. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant' score in the Personal Identification section of the score card appended to the Office's Notice as "Attachment A" was 31.40. The remaining averments of this paragraph are **DENIED**. Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the

extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

52. **DENIED**. The averments of paragraphs fifty-two (52) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10) and twenty-one (21) are incorporated herein by reference as if set forth in full. The responsive averments of this paragraph equally apply to footnote 6 indexed to the averments of paragraph fifty-two (52), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law.

53. **DENIED**. The averments of paragraph fifty-three (53) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

54. **DENIED**. The averments of paragraph fifty-four (54) are conclusions of law to which no responsive pleading is required. Appellant's irresponsible assumptions and unsupported speculation are specifically **DENIED**. By way of further answer, the responsive averments above

of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

55. **DENIED**. The averments of paragraph fifty-five (55) are conclusions of law to which no responsive pleading is required. Appellant's irresponsible and unsupported contention of a secret standard is specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

56. **DENIED.** The averments of paragraph fifty-six (56) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, Appellant's speculation as to the Office's response is specifically **DENIED**. The responsive averments of paragraphs five (5), ten (10), nineteen (19), and twenty-one (21) are incorporated herein by reference as if set forth in full.

57. **DENIED**. The averments of paragraph fifty-seven (57) are conclusions of law to which no responsive pleading is required. Appellant's assumptions and speculation are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

58. **DENIED**. The averments of paragraph fifty-eight (58) are conclusions of law to which no responsive pleading is required. The responsive averments of this paragraph equally apply to footnote 7 indexed to the averments of paragraph fifty-eight (58), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law. To the extent an answer is deemed necessary, the Office exercised its discretion in implementing the Act by the formation of a scoring committee, the members of which

were mandated to be confidential pursuant to the temporary regulations, 28 Pa. Code § 1141.35(c). Such confidentiality is of no consequence to Appellant's appeal, and is not a basis upon which the Office's exercise of its discretion can be overturned. In addition, the Scoring Methodology and Scoring Rubric were published to all applicants, including Appellant, in advance of submissions through the Instructions. Additionally, Appellant is required to raise all its objections in its initial Notice of Appeal. Appellant's reservation of rights set forth in footnote 7 is improper and should be denied by the Secretary of Health.

59. **ADMITTED**. By way of clarification, up to 50 points are available in the scoring of Attachment D to the Application. Appellant's Application received a score of 35.80 related to Attachment D.

60. **DENIED**. The averments of paragraph sixty (60) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**.

61-63. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

64. **DENIED**. Appellant's Second Application, including any attachments thereto, speak for itself and are not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** To the extent Appellant's reference to the Second

Application is intended to support its contention that the scoring of the Application was improper for any reason, the averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the scoring of Appellant's Second Application has no bearing on or relevance to the merits of the instant appeal.

65. **DENIED**. The averments of paragraph sixty-five (65) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the averments of this paragraph are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. As noted in the Office's answer to Appellant's Appeal, Appellant's assumptions and speculations concerning the decision of the Office to deny Appellant's Application are specifically **DENIED** and unsupported by the Notice, the criteria set forth in the Act, temporary regulations, or the Instructions, and otherwise are deserving of no consideration or weight by the Secretary. By way of further answer, the hypocrisy of Appellant's positions is plain - in this paragraph Appellant attacks the consistency of the scoring procedure employed by the Office because the Application and Second Application were scored too similarly, while in previous paragraphs Appellant claimed that the Applications were scored too differently. While comparison of the Application and Second Application has no relevance to the merits of the instant appeal and cannot form the basis to overturn the Office's determination in this case, Appellant's own inconsistency is telling as to the merits of its claims. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

66. **DENIED**. The averments of paragraph sixty-six (66) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the

averments of this paragraph are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

67. **DENIED**. The averments of paragraph sixty-seven (67) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the averments of this paragraph are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) is incorporated herein by reference as if set forth in full.

68-69. **DENIED**. The averments of paragraphs sixty-eight (68) and sixty-nine (69) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the averments of this paragraph are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full. In addition, the responsive averments of this paragraph and of paragraph forty-two (42) equally apply to footnote 9 indexed to the averments of paragraph sixty-eight (68), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law.

70-71. **DENIED**. The referenced publications of the Office, as well as any statements made during press conferences, speak for themselves and are not subject to the interpretation, recast, or characterization of Appellant, thus these averments are specifically **DENIED**. To the extent the averments of these paragraphs are intended to support Appellant's contention that the Office acted arbitrarily or unreasonably, the averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

72. **DENIED**. The averments of paragraph seventy-two (72), including its subparts, are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full. The Office did not consider letters of support when soring applications.

73. **DENIED**. The averments of paragraph seventy-three (73) are conclusions of law to which no responsive pleading is required.

74. **DENIED**. The referenced publications of the Office, as well as any statements made during press conferences, speak for themselves and are not subject to the interpretation, recast, or characterization of Appellant, thus these averments are specifically **DENIED**. Appellant's assumptions are specifically **DENIED**. To the extent the averments of these paragraphs are intended to support Appellant's contention that the Office acted arbitrarily or unreasonably, the averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded.

75. **DENIED**. The averments of paragraph seventy-five (75) are conclusions of law to which no responsive pleading is required. Appellant's assumptions are specifically **DENIED**. By

way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

76. **DENIED**. The application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these allegations are specifically **DENIED**. Appellant's assumptions as to application criteria and scoring thereof are specifically **DENIED**.

77. **DENIED**. The averments of paragraphs seventy-seven (77) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent the averments of this paragraph are deemed factual and a response is required, such averments are specifically **DENIED** and strict proof thereof is demanded. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments above of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

78. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant' score in the Diversity Plan section of the score card appended to the Office's Notice as "Attachment A" was 32.00. Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus any such averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

79. **DENIED**. The averments of paragraph seventy-nine (79) are conclusions of law to which no responsive pleading is required. To the extent deemed factual, the averments are

specifically **DENIED**. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of this paragraph equally apply to footnotes 10-13 indexed to the averments of paragraph seventy-nine (79), the contents of each of which are specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law. the Office properly scored Appellant's Application – and all dispensary permit applications - within the discretion afforded to it by the General Assembly in the Act and 28 Pa. Code § 1141.34(8) and (9) of the temporary regulations, and by its interpretation of the Act in the discharge of its statutory obligation pursuant to 35 P.S. § 10231.301(a) to implement and administer the Act; consistent with all provisions of the Act, including specifically, but not limitedly, with the criteria in 35 P.S. § 10231.603(a.1) of the Act, and the temporary regulations, specifically, but not limitedly, including the factors in 28 Pa. Code § 1141.24(b) (relating to medical marijuana regions); and consistent with Section VI (Scoring Methodology and Scoring Rubric) of the Instructions.

In addition, all applicants, including Appellant, were evaluated and given a total score. A higher score in one or more individual categories did not outweigh lower scores in other categories, and the total score resulted in the Office's granting of permits. The successful applicant in the County in which Appellant applied who was granted a dispensary permit had a higher total score than Appellant, a fact admitted by Appellant and not in dispute in this Appeal. Comparison of the scores of other applicants referenced by Appellant in the same or different counties is of no moment to the merits of Appellant's appeal; applications were not scored against each other, but rather were individually scored based on the information an applicant provided in the discretion of the Office and in accordance with the criteria of the Act, the temporary regulations, and the

Instructions, specifically, but not limitedly, Section VI (Scoring Methodology and Scoring Rubric).

Moreover, Appellant's attempt to self-servingly assess the scoring of other dispensary applications, the merits of any such assessment being specifically denied, is not a proper grounds for Appellant's appeal of the scoring of its Application, and otherwise attempts to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the denial of permits pursuant to 28 Pa. Code § 1141.34(8) and (9). The Office determined in the exercise of its sole discretion that the issuance of a dispensary permit to Appellant would not be in the best interest of the welfare, health or safety of the citizens of this Commonwealth, *see* 35 P.S. § 10231.603; 28 Pa. Code § 1141.34(9), and the averments of this paragraph, or any other averment of Appellant's Appeal, are insufficient to disturb such determination on appeal.

80. **DENIED**. The averments of paragraph eighty (80) are conclusions of law to which no responsive pleading is required. By way of further answer, the responsive averments of paragraph seventy-nine (79) above, as well as paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

81. **DENIED**. The averments of paragraph eighty-one (81) are conclusions of law to which no responsive pleading is required. To the extent deemed factual, the averments are specifically **DENIED**. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraph seventy-nine (79) above are incorporated herein by reference as if set forth in full.

82. **DENIED.** The averments of paragraph eighty-two (82) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant's Application speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraphs twenty-one (21) and seventy-nine (79) above are incorporated herein by reference as if set forth in full.

83. **DENIED**. The averments of paragraph eighty-three (83) are conclusions of law to which no responsive pleading is required. To the extent deemed factual, the averments are specifically **DENIED**. Appellant's assumptions are specifically **DENIED**. By way of further answer, the responsive averments of paragraph seventy-nine (79) above are incorporated herein by reference as if set forth in full.

84. **DENIED.** The averments of paragraph eighty-four (84) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant's Application speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraph seventy-nine (79) above, as well as paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and thirty-nine (39) are incorporated herein by reference as if set forth in full.

85. **DENIED**. The application requirements of the Act, temporary regulations, and Instructions speak for themselves and are not subject to interpretation by Appellant, thus these

allegations are specifically **DENIED**. Appellant's assumptions as to application criteria and scoring thereof are specifically **DENIED**.

86. **DENIED.** Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments, including all subparts, are specifically **DENIED.** To the extent the averments of this paragraph are intended to aver compliance with any application criteria, such averments are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

87. **ADMITTED** in part; **DENIED** in part. It is admitted only that Appellant' score in the Community Impact section of the score card appended to the Office's Notice as "Attachment A" was 43.00. The remaining averments of this paragraph are **DENIED** as conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. Appellant's Application, including any Attachments thereto, speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus any such averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), and thirty-five (35) are incorporated herein by reference as if set forth in full.

88. **DENIED.** The averments of paragraph eighty-eight (88) are conclusions of law to which no responsive pleading is required. To the extent deemed factual, the averments are specifically **DENIED**. Appellant's assumptions are specifically **DENIED**. By way of further

answer, the responsive averments of paragraph seventy-nine (79) above are incorporated herein by reference as if set forth in full.

89. **DENIED.** The averments of paragraph eighty-nine (89) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. Appellant's Application speaks for itself and is not subject to being recast or otherwise characterized in this Appeal, thus these averments are specifically **DENIED.** By way of further answer, the responsive averments of paragraph seventy-nine (79) above, as well as paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), thirty-nine (39), and fifty-eight (58) are incorporated herein by reference as if set forth in full.

90. **DENIED.** The averments of paragraph ninety (90) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. To the extent any averment of this paragraph is deemed factual, such averment is specifically **DENIED**. By way of further answer, the responsive averments of paragraphs five (5), ten (10), nineteen (19), twenty-one (21), twenty-five (25), thirty-five (35), and seventy-nine (79) are incorporated herein by reference as if set forth in full.

91-102. **DENIED**. The averments of paragraphs ninety-one (91) through one hundred two (102) are conclusions of law to which no responsive pleading is required and strict proof thereof is demanded. The responsive averments of this paragraph equally apply to footnote 15 indexed to the averments of paragraph ninety-five (95), the content of which is specifically **DENIED** to the extent deemed factual, and otherwise generally **DENIED** as conclusions of law. To the extent any averment of these paragraphs is deemed factual, such averment is specifically **DENIED**.

NEW MATTER

103. The responsive averments of paragraphs one (1) through four (4) and (1) through one hundred two (102) above are incorporated herein by reference as if set forth in full.

104. The Office did not abuse its direction in the scoring of Appellant's Application.

105. The Office's denial of Appellant's Application was not arbitrary, capricious, or otherwise the result of a clear error of law.

106. The Office has the sole discretion to determine whether the issuance of a dispensary permit to Appellant would be in the best interest of the welfare, health or safety of the citizens of this Commonwealth. *See* 35 P.S. § 1023.603; 28 Pa. Code § 1141.34(9).

107. The evaluation of the content of Appellant's Application for compliance with the Act and/or the temporary regulations against the criteria for the issuance of dispensary permits in the Act and temporary regulations, and the granting or denial of such permits pursuant thereto, is the sole and exclusive responsibility of the Office and is accomplished in the sole exercise of the discretion of the Office as conferred by the General Assembly to interpret and implement the Act, and in compliance with the temporary regulations. *See* 35 P.S. §§ 10231.301(a)(1) (relating to issuance of permits); 10231.603(a) (relating to granting of a permit); *see also* 28 Pa. Code §§ 1141.24(b) (relating to medical marijuana regions); 1141.27 (relating to general requirements for applications); 1141.29 (b) (relating to initial permit applications); 1141.33 (relating to review of initial permit applications); and 1141.34 (relating to denials of permits).

108. The Office properly scored Appellant's Application – and all dispensary permit applications - within the discretion afforded to it by the General Assembly in the Act and 28 Pa. Code § 1141.34(8) and (9) of the temporary regulations and consistently with the criteria in the Act, temporary regulations, and Instructions.

109. Appellant's self-serving declarations of compliance with the requirements for application criteria, the manner in which Application criteria should be evaluated or scored, and the scoring assigned to any particular aspect or criteria of the Application, including any self-hypothesized scoring that Appellant avers should have been assigned to its Application, are deserving of no weight or consideration by the Secretary as they are improper grounds for Appellant's appeal of the scoring of its Application, and otherwise attempts to improperly usurp the discretion afforded the Office by the General Assembly to interpret and implement the Act, and otherwise to determine in its sole discretion the scoring and denial of permits pursuant to 28 Pa. Code § 1141.34(8) and (9) and all other provisions of the Act and temporary regulations.

110. Comparison of the scores of other applicants referenced by Appellant in the same or different counties is of no moment to the merits of Appellant's appeal; applications were not scored against each other, but rather were individually scored based on the information an applicant provided and reviewed in the discretion of the Office in accordance with the criteria of the Act, the temporary regulations, and the Instructions, specifically, but not limitedly, Section VI (Scoring Methodology and Scoring Rubric).

111. Appellant – and all dispensary permit applicants – were notified of the criteria established by the Act and temporary regulations, as well as the Instructions, inclusive of the Scoring Methodology and Scoring Rubric employed by the Office, in advance of the submission of applications.

112. The Office's interpretation of the Act in the discharge of its statutory obligation pursuant to 35 P.S. § 10231.301(a) to implement and administer the Act is entitled to great deference and Appellant has presented no grounds upon which to question or contradict such interpretation.

113. The Office's denial of Appellant's Application was consistent with all provisions of the Act, including specifically, but not limitedly, with the criteria in 35 P.S. § 10231.603(a.1) of the Act, and the temporary regulations, specifically, but not limitedly, including the factors in 28 Pa. Code § 1141.24(b) (relating to medical marijuana regions).

114. The Office's scoring of Appellant's Application was consistent with Section VI (Scoring Methodology and Scoring Rubric) of the Office's Instructions.

115. Any denial raised in response to Appellant's Notice of Appeal, as well as any answer provided thereto, is incorporated herein.

116. Any factual or legal contention not raised in Appellant's Notice of Appeal is waived and should not be considered by the Secretary of Health.

117. Appellant's total score was lower than the score of the applicant in the County in which Appellant applied.

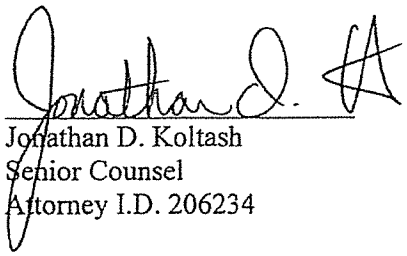
118. The Office determined in the exercise of its sole discretion that the issuance of a dispensary permit to Appellant would not be in the best interest of the welfare, health or safety of the citizens of this Commonwealth. *See* 35 P.S. § 1023.603; 28 Pa. Code § 1141.34(9).

119. Appellant has failed to establish or present any grounds for overturning the Office's denial of the Application.

WHEREFORE, the Office requests that the Secretary of Health affirm the Office's decision to deny Appellant's Medical Marijuana Dispensary Permit Application, deny Appellant's appeal, and dismiss this matter with prejudice.

Respectfully submitted,

Alison Taylor
Chief Counsel
Attorney I.D. 61876

By: 
Jonathan D. Koltash
Senior Counsel
Attorney I.D. 206234

Office of Legal Counsel
Department of Health
825 Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120
Phone: (717) 783-2500

Attorneys for the Department of Health, Office of Medical Marijuana

Date: July 17, 2017

VERIFICATION

I, John J. Collins, hereby verify that the statements contained in the foregoing Answer are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

7/17/17
Date

John J. Collins, MBA, R.T.(R)(N), CNMT
Director, Office of Medical Marijuana

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

KEYSTONE RELEAF LLC, **Appellant,** **v.** **PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,** **Appellee.**	**Docket No. MM 17-096 D**

CERTIFICATE OF SERVICE

I, Jonathan D. Koltash, Senior Counsel, hereby certify that on the 17th day of July, 2017, in accordance with the requirements of 1 Pa. Code § 33.32 (relating to service by a participant), the forgoing Answer to Appellant's Notice of Appeal has been served on the following person by First Class Mail:

Seth R. Tipton, Esquire
Keystone ReLeaf LLC
60 West Broad Street
Suite 102
Bethlehem, PA 18018

Jonathan D. Koltash
Senior Counsel
Attorney I.D. 206234

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

EXHIBIT C

March 7, 2017 - Fingerprints & Criminal History Background Checks

March 7, 2017 Update: For Phase One, the Department will not require applicants to include a fingerprint-based criminal history background check with the submission of their permit application. However, in order for the permit application to be considered complete, applicants must check the box under "Background Checks" on page 2 of the Permit Application's "Attachment A: Signature Page" by the time you submit your permit application to the Department or by the close of the application period on March 20, 2017.

When the criminal history background check system is accessible, the Department will publish notice on its website advising applicants and providing direction on how to access the system in order to submit a fingerprint-based criminal history background check.

Please continue to check the Department's website periodically for updates.

Important:

An applicant must check the box on Attachment A: Signature Page located under the heading "BACKGROUND CHECKS" that indicates "The applicant has requested background checks, as described in the instructions."

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

EXHIBIT D

Tax Clearance Certificates

An applicant who is currently conducting business within Pennsylvania must complete and submit "Attachment H: Tax Clearance Certificates" to the Department of Health as part of the applicant's complete permit application package. The Department of Health will submit "Attachment H: Tax Clearance Certificates" to both the Department of Revenue and the Department of Labor and Industry on the applicant's behalf to obtain tax clearance certificates.

An applicant who is not currently conducting business within Pennsylvania must complete and submit a PA-100, PA Enterprise Registration Form to the Department of Revenue. On the permit application, an applicant should fill in the business information requested in "Attachment H: Tax Clearance Certificates" with the same information that it provided in the PA-100 Form. A completed "Attachment H: Tax Clearance Certificates" and a copy of the completed PA-100 Form must be submitted to the Department of Health along with the applicant's complete permit application package. After the applicant submits its completed PA-100 PA Enterprise Registration Form, an applicant is not required to contact the Department of Revenue or take additional steps to fulfill the permit application requirement of obtaining tax clearance certificates.

Important:

An applicant should not directly contact either the Department of Revenue or the Department of Labor and Industry for tax clearance certificates.

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

EXHIBIT E

pennsylvania
DEPARTMENT OF HEALTH

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS MAIL, POSTAGE PRE-PAID

DATE OF MAILING: June 20, 2017

Keystone ReLeaf LLC
60 W. Broad Street., Ste. 102
Bethlehem, PA 18018

Notice REJECTING Medical Marijuana Grower/Processor Permit Application

Applicant Name: Keystone ReLeaf LLC
Applicant ID: GP-2028-17
Facility Name and Location:
Keystone ReLeaf LLC
732 North 16th Street
Allentown, PA 18104

Dear Keystone ReLeaf LLC:

The Pennsylvania Department of Health, Office of Medical Marijuana (Office), is solely contacting you, the primary contact, regarding the Medical Marijuana Grower/Processor Permit Application referenced above. The Office has reviewed the Medical Marijuana Grower/Processor Permit Applications that were submitted during Phase One of the implementation of the Medical Marijuana Program. Based on the Office's review, the Medical Marijuana Grower/Processor Permit Application that is referenced above is **REJECTED** as incomplete and has not been further evaluated and scored. *See* 28 Pa. Code § 1141.27(d).

Your Grower/Processor Application and Attachments, which are incorporated herein by reference, failed to include the following:

> A timely submitted and complete application. On March 20, 2017, you submitted your initial permit application fee, initial permit fee, and the required Attachments, but did not submit your Grower/Processor Permit Application. Your Grower/Processor Permit Application was not submitted until March 22, 2017, which is after the March 20, 2017 deadline to submit a complete Grower/Processor Permit Application. *See* 35 P.S. § 10231.602; 28 Pa. Code §§ 1141.27(c)(3) and 1141.29(a) and (a)(1)-(3).

Because you were not granted a grower/processor permit, your initial permit fee will be returned to you. *See* 35 P.S. § 10231.607(1)(ii). The Office anticipates returning the initial permit fee within ninety (90) days of the date of mailing of this Notice Denying Medical Marijuana Grower/Processor Permit Application.

You may appeal this Notice Rejecting Your Medical Marijuana Grower/Processor Permit Application to the Secretary of Health.

If you wish to appeal the Office's action, you must complete and file the attached "Notice of Appeal" **within 10 days of the date of mailing** of this Notice Rejecting Medical Marijuana Grower/Processor Permit Application. *See* 1 Pa. Code § 35.20. Your appeal must be in writing and must respond to the Office's reason(s) for rejecting your medical marijuana grower/processor permit application, as stated above. If you choose to appeal, it will be your burden to demonstrate why the Office's decision should be overturned in this case. All appeals from actions of the Office are governed by the General Rules of Administrative Practice and Procedure. *See* 1 Pa. Code Part II, Chapters 31-35.

To file an appeal, you **must** submit an original and **two (2)** copies of your Notice of Appeal and Certificate of Service to the Department of Health's Docket Clerk at the following address:

Pennsylvania Department of Health
Attn: Tammy Morrison, Docket Clerk
Office of Legal Counsel, Room 825
625 Forster Street, Health & Welfare Building
Harrisburg, PA 17120

Please note that the date of **receipt by the Docket Clerk**, not the date you deposit the Notice of Appeal in the mail, determines the date your appeal is filed. *See* 1 Pa. Code § 31.11. As a result, if the Docket Clerk does not **receive** your appeal by 5:00 p.m. EST on the 10th day from the date of mailing of this notice, it will be considered late, and the Secretary of Health will be unable to consider your appeal.

Additionally, a copy of your Notice of Appeal and Certificate of Service must be served on the Department of Health's Office of Legal Counsel within 10 days of the date of mailing of the Notice Rejecting Medical Marijuana Grower/Processor Permit Application at the following address:

Office of Legal Counsel
Pennsylvania Department of Health
Health & Welfare Building, Room 825
625 Forster Street
Harrisburg, PA 17120-0701

A form Certificate of Service is attached for your convenience.

Sincerely,

John J. Collins, MBA, R.T.(R)(N), CNMT
Director, Office of Medical Marijuana

Enclosures

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

_____, Appellant,	:	
	:	Docket No. _____
vs.	:	
	:	
Department of Health, Office of Medical Marijuana, Appellee.	:	

NOTICE OF APPEAL

1. Appellant is _____
(name, address, and telephone number)

2. Appellant appeals the following decision of the Department of Health, Office of Medical Marijuana (hereinafter "Office"):
_____
_____

3. The date of mailing of the Notice Rejecting Medical Marijuana Grower/Processor Permit Application is:
_____

4. Appellant objects to the Notice of Rejection for the following reasons:
_____
_____
_____
_____
_____

Please attach additional sheets of paper as needed. All averments and reasons must be set forth in numbered paragraphs.

_____
(Signature of appellant or representative of appellant)

_____

_____
(Name and address of appellant or representative of appellant)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

_____,	:	
Appellant,	:	
	:	Docket No. _____
vs.	:	
	:	
Department of Health,	:	
Office of Medical Marijuana,	:	
Appellee.	:	

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2017, I served a copy of the foregoing Notice of Appeal on each of the following persons in the manner indicated below:

Service by first-class mail addressed as follows:

_____
(name and address)

Service in person:

_____
(name and address)

_____
(Signature of person filing)

_____

_____
(Name and address of person filing)

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

EXHIBIT F

READING EAGLE COMPANY

PUBLISHER OF READING EAGLE

345 PENN STREET - READING, PENNSYLVANIA

Mailing Address: P.O. Box 582, READING, PA 19603-0582
Telephone: (610) 371-5000 - 1 800-633-7222

July 27, 2017

Erik Arneson, executive director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Dear Erik Arneson:

On April 6, I requested under Pennsylvania's Right-to-Know Law copies of all the public information in applications submitted to the Department of Health for medical marijuana grower and dispensary permits.

The health department has exclusive jurisdiction and authority to license and regulate permits to grow and dispense medical marijuana in Pennsylvania and as such is subject to Pennsylvania's Right-to-Know Law's presumption of access.

On April 10, the health department requested a 30-day extension for a legal review. On May 11, the agency requested an additional 45-day extension saying, "there is confidential information in the applications that has to be redacted" to which I agreed because of the number and length of applications. However, knowing applicants were instructed to submit a redacted version, I also wanted clarification on who would be doing the redacting in my request, which I inquired about in an email to Department of Health Press Secretary April Hutcheson.

Hutcheson responded saying, the "department will also review and redact the applications in accordance with the RTKL to prevent the release of sensitive information such as security information and social security numbers."

This response allayed my concerns that the agency would simply be releasing the applicant-redacted version without verifying all redactions were legally permissible under Pennsylvania's Right-to-Know Law.

On June 27, the health department requested an additional 30-day extension through July 31 to comply. I agreed believing in the agency's good faith to produce, if given enough time, applications with only the redactions the health department had repeatedly told me and my colleagues it could legally defend.

On July 21, the health department's Open Records Officer Lisa M. Keefer informed me my request was denied and granted in part, referring me to the applicant-redacted applications on the agency's website.

In her final letter, Keefer informed me the partial denial is marked "DOH Redacted" in the application and is exempt under Section 706 of the RTKL, 65 PS § 67.706. The "DOH redacted" information — Keefer said – includes home addresses, direct phone numbers, driver's license information, dates of birth, passport information, Social Security numbers, Federal Employer Identification Numbers, personal identification numbers, bank account information, tax information, credit card numbers, and email addresses, pursuant to 65 PS § 67.708(b)(1)(ii) and (b)(6)(i).

The agency did not provide a legal basis for any of the applicant redactions.

In total, there are 457 grower and dispensary applications for which these redactions may apply.

The *Reading Eagle* is not disputing any of the DOH redactions as listed.

Included, however, in the agency's response are documents with significant applicant redactions that *do not* bear the mark "DOH redacted" and therefore were not reviewed by the agency for adherence to Pennsylvania's RTKL. It is this information that the *Eagle* sought in its April 6 RTK request, for which the agency asked and was granted multiple extensions in which to comply.

As the agency has been unresponsive to my Right-to-Know, the repeated extension requests were not made in good faith.

I am appealing to the Office of Open Records in the belief the health department erred in its final response. The responsive documents were not part of my request. I requested copies of the application, not the application copy applicants were instructed to redact as part of the company's submission.

The applications – if redacted – were supposed to adhere to state law.

Clearly this was not the case as the applications include such redactions as:

- The health department's logo.
- Application questions and page numbers.
- Applicant signatures.
- Business name, address and phone numbers.
- Proximity to health care facilities.
- Community impact statements.

In at least one application *The Reading Eagle* reviewed, the company – Healing II LLC in Philadelphia – redacted nearly its entire 186-page grower application, including instructions.

The discrepancies were permitted because the agency allowed those seeking permits to grow and dispense medical marijuana to submit two applications: one for the evaluation committee and a

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PUBLISHER OF READING EAGLE
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second, self-redacted version for the public. It was this second, applicant-redacted version the agency released online and directed me to, saying it fulfilled my RTK request.

Hutcheson, the agency's spokeswoman who requested an additional extension to comply with the request, later told my colleague in July (after the second extension request was granted) that the health department would not unredact applicant redactions.

Pennsylvania's Right-to-Know Law tasks state agencies – not applicants and contractors – to determine, what information will be released when a public record contains information that is and is not subject to access. Specifically, Section 706 says, "If the information which is not subject to

access is an integral part of the public records, legislative record or financial record and cannot be separated, *the agency shall redact from the record the information which is not subject to access*, and the response shall grant access to the information which is subject to access."

Section 707(b) of the law allows third parties to offer input – upon notice – when a requested record may contain confidential and/or proprietary information, but the duty to determine what is and what is not public information falls on the agency, not the applicants. Moreover, by instructing applicants to redact information exempt under the RTKL, the agency relinquished its RTKL duties, leading to applicant-made redactions inconsistent with the law.

The Department of Health cannot outsource its RTK duties under the law to applicants seeking government permits.

The *Reading Eagle* therefore believes the Department of Health must conduct an independent review of the applications to ensure all the redactions are supported by state law and respectfully asks the agency to do so and release the information, in the public's interest.

In addition to my communications with the health department, please also find attached examples of applicant-redacted excerpts from SMPB Retail LLC, Mission Pennsylvania II LLC, Bunker Botanicals LLC, and Franklin BioScience Penn LLC.

Thank you for considering my appeal.

Sincerely,

Lisa F. Scheid

Lisa F. Scheid
Staff Writer
Reading Eagle Company
lscheid@readingeagle.com
610-371-5049, direct

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

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EXHIBIT G

pennsylvania
DEPARTMENT OF HEALTH

August 14, 2017

Seth R. Tipton
60 West Broad, Street, Ste. 102
Bethlehem, PA 18018

stipton@fpsflawfirm.com

RE: Right to Know Law Request
DOH-RTKL-MM-039-2017

Dear Mr. Tipton:

This letter acknowledges receipt by the Pennsylvania Department of Health (Department) of your written requests for records under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. I received your request on July 7, 2017. You requested copies[1] of:

1. Any and all documents indicating the identities of the individuals, and/or their consultants or independent contractors, who scored or considered the applications for grower/processor permits.

2. Any and all scoring rubrics or documents reflecting the procedure and/or process for scoring the applications for grower/processor permits.

3. The applications of each grower/processor permittee in unredacted form.

4. All applications for a grower/processor permit which did not result in a grower/processor permit award in redacted and un-redacted form.

Your request is granted in part and denied in part. Your request in paragraph (1) is denied. Pursuant to the RTKL, a Commonwealth agency is required to provide "public records" in response to a RTKL request. *See* 65 P.S. § 67.301. The term "public record" is defined as "a record, including a financial record, of a Commonwealth agency that is not exempt under section 708, *is not exempt from being disclosed under any other Federal or State law or regulation* or judicial order or decree; or is not protected by a privilege." 65 P.S. § 67.102 (emphasis added). Pennsylvania regulations governing the Department's medical marijuana program prevent the

[1] Your request was modified from a request for certified copies to a request for electronic delivery.

release of the information that you are seeking regarding the identity of the application reviewers. *See* 28 Pa. Code § 1141.35(c).

Your request in paragraph (2) is granted in part and denied in part due to redaction. The following records are enclosed: The training presentation provided to the application reviewers (please note that although the page numbering in the bottom right corner is not sequential, no pages were withheld); the diversity plan evaluation matrix, the community impact scoring matrix; and the template scoring worksheet. Pre-decisional material and any information pertaining to identification of the application review panel has been redacted pursuant to 65 P.S. §§ 67.102 and 67.708(b)(10)(i)(A) and 28 Pa. Code § 1141.35(c). Please refer to the Department's public website at www.health.pa.gov, under the Pa. Medical Marijuana tab to find the following additional materials utilized in the scoring process: the Medical Marijuana Act; Medical Marijuana Temporary Regulations; Application Instructions, particularly pages 7-10, which reference the criteria specified in Section 603(a) of the Medical Marijuana Act, 35 P.S. § 10231.603; Medical Marijuana Grower/Processor Permit Application; Medical Marijuana Dispensary Permit Application; and Medical Marijuana Organization Permit Application Attachments A-L.

Your requests in paragraphs (3) and (4) for un-redacted applications are denied, but your request for redacted applications is granted. The Department has posted, at www.health.pa.gov, all redacted applications for medical marijuana grower/processor permits. Information redacted by the Department is marked as "DOH Redacted" or "DOH Redaction." Any other redactions were made by the applicant. The Department redacted certain information from the records disclosed, as explained below, to the extent that the information was included in the records. Section 706 of the RTKL, 65 P.S. § 67.706, permits an agency to redact from a public record information that is exempt from access under the RTKL.

Individual home addresses, direct phone numbers, driver's license information, dates of birth, passport information, Social Security Numbers, Federal Employer Identification Numbers (FEINs), personal identification numbers (PIN), bank account information, tax information, credit card numbers, and email addresses were redacted pursuant to 65 P.S. §§ 67.708(b)(1)(ii) and (b)(6)(i). This information, individually and in combination with other information, could be used to create significant financial harm to the persons or those employed by or associated with the persons that submitted the information or to whom the information relates. This information is also exempt from access pursuant to the privacy protections of the 4th Amendment of the United States Constitution and Art. 1, § 8 of the Pennsylvania Constitution, and is therefore excluded from the definition of a "public record." *See* 65 P.S. §§ 67.102 and 67.305(a)(3) (excluding from "public record" definition and presumption records exempt from disclosure under any other Federal or State law or regulation or judicial order or decree).

The Department further redacted records that an applicant marked as a trade secret or confidential proprietary information, but failed to redact the material, and financial records relating to the third party. *See* 65 P.S. §§ 67.707(b); 67.708(b)(11); and 67.305(a)(1) Finally, records that, if disclosed, would create a reasonable risk of endangering the safety or security of a building; expose or create a vulnerability within critical systems, i.e. building plans or infrastructure records; or jeopardize computer security, were redacted. *See* 65 P.S. §§ 67.708(b)(3), (b)(3)(iii), and (b)(4).

Regarding the applicant redactions, the Department cannot release information that has been redacted by applicants because "agencies are not permitted to waive a third party's interest in protecting the[ir] records." *Pennsylvania Dep't of Educ. v. Bagwell*, 131 A.3d 638, 650 (Pa. Cmwth. 2015); *Dep't of Corr. v. Maulsby*, 121 A.3d 585 (Pa. Cmwlth. 2015).

You have a right to appeal this this partial denial in writing to the Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

1) This response;
2) Your request; and
3) The reasons why you think the information identified in this response as exempt from access is, in fact, subject to access.

Also, the OOR has an appeal form available on the OOR website at: https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf.

Please be advised that this correspondence will serve as the Department's final response and to close this record with our office as permitted by law.

Sincerely,

Lisa M. Keefer

Lisa M. Keefer
Agency Open Records Officer
Pennsylvania Department of Health
625 Forster Street
825 Health and Welfare Building
Harrisburg, PA 17120-0701

Date of Mailing: 08/14/2017

Enclosures

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

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399 MD 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
	:	DOCKET NO.
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, Seth R. Tipton, Esquire hereby certify that on 8th day of September, 2017, a true and correct copy of this PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT IN EQUITY SEEKING A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF was served, via certified mail, on the following entities:

Pennsylvania Department of Health
Office of Medical Marijuana
8th Floor West
625 Forster Street
Harrisburg, PA 17120

Commonwealth of Pennsylvania
The Honorable Josh Shapiro
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

/s/ Seth R. Tipton
Seth R. Tipton, Esquire

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

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399 MD 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keystone Releaf LLC, Petitioner v. Pennsylvania Department of Health, et al.	:	New Case

PROOF OF SERVICE

I hereby certify that this 8th day of September, 2017, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Attorney General
Service Method:	eService
Service Date:	9/8/2017
Address:	Strawberry Square 16th Floor Harrisburg, PA 17120
Phone:	(71-7) -787-3391

Served:	Pennsylvania Department of Health
Service Method:	First Class Mail
Service Date:	9/8/2017
Address:	Office of Medical Marijuana 8th Floor West 625 Forster Street Harrisburg, PA 17120
Phone:	--
Representing:	Respondent Pennsylvania Department of Health

Served:	Pennsylvania Office of Attorney General
Service Method:	First Class Mail
Service Date:	9/8/2017
Address:	The Honorable Josh Shapiro Pennsylvania Office of Attorney General 16th Floor, Strawberry Square Harrisburg, PA 17120
Phone:	--
Representing:	Respondent Pennsylvania Office of Attorney General

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Seth Robert Tipton

(Signature of Person Serving)

Person Serving:	Tipton, Seth Robert
Attorney Registration No:	310773
Law Firm:	Florio Perrucci Steinhardt & Fader, LLC
Address:	Florio Perrucci ET AL 60 W Broad St Ste 102 Bethlehem, PA 180185721
Representing:	Petitioner Keystone Releaf LLC

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

FLORIO PERRUCCI STEINHARDT & FADER, LLC
Seth R. Tipton, Esquire (No. 310773)
Robert A. Freedberg, Esquire (No. 7855)
Robert M. Donchez, Esquire (No. 209505)
Stephen J. Boraske, Esquire (No. 321312)
60 West Broad Street, Suite 102
Bethlehem, PA 18018
Phone: (610) 691-7900
Fax: (610) 691-0841
Attorneys for Petitioner, Keystone ReLeaf LLC

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
vs.	:	DOCKET NO.
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Application for Special Relief in the Nature of a Preliminary and Permanent Injunction within fourteen (14) days of service hereof, or within the time set by Order of the Court, or a Judgment may be entered against you.

FLORIO, PERRUCCI, STEINHARDT & FADER, LLC

/s/ Seth R. Tipton
Seth R. Tipton, Esquire

Date: September 8, 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
	:	DOCKET NO.
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY AND PERMANENT INJUNCTION

Petitioner, Keystone ReLeaf LLC (hereinafter "Petitioner" or "Keystone"), by and through its undersigned counsel, hereby moves pursuant to Rule 123 and Rule 1532 of the Pennsylvania Rules of Appellate Procedure for special relief in the form of a preliminary and permanent injunction enjoining Respondent, Pennsylvania Department of Health, Office of Medical Marijuana (hereinafter "Respondent" or "Office") from continuing to carry out its flawed, inequitable, and unconstitutional systemic process for: (1) accepting, reviewing, and scoring medical marijuana grower/processor and medical marijuana dispensary permit applications; and (2) issuing medical marijuana grower/processor and medical marijuana dispensary permits to selected applicants (hereinafter, collectively, the "Permitting Process"), pursuant to the Pennsylvania Medical Marijuana Act

("Act"), 35 P.S. § 10231.101 *et seq.*, until resolution of this litigation. In support of this application, Petitioner hereby incorporates the Verified Petition for Review filed in this action on September 8, 2017. Petitioner further states the following:

BACKGROUND

1. As set forth more fully in the Verified Petition for Review, filed on September 8, 2017, Petitioner alleges that Respondent has abused its discretion, acted *ultra vires*, arbitrarily, capriciously, and unreasonably, and otherwise failed to lawfully interpret and apply the Act and the medical marijuana temporary regulations (hereinafter "Temporary Regulations") by subjecting all medical marijuana permit applicants to a secretive, inequitable, and unconstitutional Permitting Process.

2. As a result of the Respondent's flawed Permitting Process, medical marijuana applicants cannot fairly and meaningfully challenge their denial of a permit in violation of their constitutional due process rights, making Respondent's Permitting Process unconstitutional, inherently inequitable, and all Respondent actions in connection with the Permitting Process are unlawful, *ultra vires*, and arbitrary, capricious, and unreasonable.

3. In addition, the Respondent waived certain Legislative requirements for some applicants but not all, made exceptions for certain applicants but not

others, and ultimately treated like applicants differently, rendering the Permitting Process arbitrary, capricious, and unreasonable, and lacking the force of law.

4. The Respondent has also failed to adhere to its own Temporary Regulations, resulting in the Respondent's non-compliance with the Right-to-Know Law (hereinafter "RTKL"), further exacerbating the Permitting Process's lack of transparency, contributing to the lack of meaningful administrative review and the denial of due process to permit applicants, and further rendering the Permitting Process arbitrary, capricious, and unreasonable.

5. The Respondent has refused to release the identities or even the qualifications of the individuals who scored the applications as part of the Permitting Process, thus the Permitting Process is inherently flawed and may have been infected by bias and favoritism, further rendering all Respondent actions in connection with the Permitting Process arbitrary, capricious, and unreasonable.

INJUNCTIVE RELIEF

6. Petitioner moves this Court for an Order declaring the Permitting Process invalid and unconstitutional. To effectuate that ruling, Petitioner now seeks a preliminary and permanent injunction restraining further administration of the Permitting Process pending the final outcome of this case.

7. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief including an injunction "in the interest of justice and consistent with the usages and

principles of law." The standard for obtaining a preliminary injunction pursuant to Pa. R.A.P. 1532 is the same as obtaining an injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Cmwlth. Ct. 2004); *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 441 (Pa. 1982). Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. Pa. R.A.P. 1532(a).

8. A preliminary injunction may be granted to preserve the status quo when important legal questions deserving of serious consideration and resolution must be resolved and the threat of immediate and irreparable harm to the petitioning party is evident. *T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 780-81 (Pa. Cmwlth. Ct. 1985) (quoting *Fischer v. Dep't of Public Welfare*, 439 A.2d 1172, 1174–75 (Pa. 1982)).

9. Pennsylvania courts consider the following factors before ordering a preliminary injunction: "(1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury would result from refusing an injunction than from granting it, and, the issuance of the injunction will not substantially harm other interested parties; (3) an injunction will properly restore the parties to their status as it existed prior to the alleged wrongful conduct; (4) the activity the petitioner seeks to restrain is

actionable, the right to relief is clear, and success on the merits is likely; (5) the injunction is reasonably suited to abate the offending activity; and (6) an injunction will not adversely affect the public interest." *Dusman v. Bd. of Directors of Chambersburg Area Sch. Dist.*, 123 A.3d 354, 360 (Pa. Cmwlth. Ct. 2015), *appeal denied*, 635 Pa. 735 (2016) (citations omitted).

10. Here, Petitioner meets all of the elements for entering a preliminary and permanent injunction.

11. First, in the event that this Court does not invalidate or stay the Permitting Process, all rejected applicants, including Petitioner, will suffer irreparable injury as the first round of licenses will have been awarded to applicants who are potentially less qualified than the rejected applicants, and Petitioner has no adequate remedy at a law to redress this harm.

12. At the outset, it is a simple truth that once contracts are in place between the selected applicants and third parties, the Respondent's ability to undo or remedy the unlawful Permitting Process will become increasingly difficult. The Respondent will not be in a position to easily withdraw or terminate those contracts once the parties have initiated performance. Thus, at the same time rejected permit applicants, such as Petitioner, resolve its administrative appeal (and now this proceeding), the selected applicants are no doubt working to continue the Permitting Process.

13. Further, by potentially scoring applications in a manner inconsistent with the requirements in the Act, the Respondent violated the Act and "a violation of [a] statute constitutes irreparable harm." *Markham v. Wolf*, 147 A.3d 1259, 1270 (Pa. Commw. Ct. 2016) (quoting *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317 (Pa. 1947)).

14. Second, greater injury will result from refusing to grant the injunction than granting it because although an injunction may briefly delay the Permitting Process, the public will ultimately benefit from the highest quality applicants delivering a safe and effective treatment to patients, and where the goal is safety and the public interest, a brief delay to ensure the highest quality applicants are accepted based upon a fair, objectively-applied scoring process is preferable to a result that awards permits to unqualified applicants.

15. Third, an injunction will restore the parties to the original status as it will afford Petitioner and all applicants with a chance to participate in a fair, transparent, and objectively-applied Permitting Process and preclude Respondent from continuing to carry out the flawed and unlawful Permitting Process.

16. Fourth, the Permitting Process is actionable as a Department of Health agency action and enforcement of the Act and Temporary Regulations; Petitioner and all medical marijuana applicants have a clear right to relief as entities denied a medical marijuana grower/processor and/or dispensary permit;

and Petitioner has demonstrated a strong likelihood of success by identifying a significant number of constitutional, statutory, and regulatory violations based upon the numerous examples of arbitrary, capricious and unreasonable decision-making and scoring on the part of the Respondent in carrying out the Permitting Process.

17. To succeed on the "clear right of relief" element, Petitioner "need not prove the merits of [its] underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties." *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 506 (Pa. 2014).

18. As further detailed in the Verified Petition for Review, there are substantial legal questions concerning whether the Respondent violated the law by awarding medical marijuana permits pursuant to a flawed and inequitable Permitting Process, and whether the Respondent has deprived Petitioner of a meaningful process to challenge its improper actions, which if not cured now will be incapable of being cured by the time Petitioner can return to this Court seeking relief.

19. Fifth, an injunction is reasonably suited to abate the offending activity because it will result in a halt to the unlawful, arbitrary, capricious, and *ultra vires* Permitting Process.

20. Sixth, an injunction will not adversely affect the public interest because it will allow the Respondent to undertake a new, transparent, and valid Permitting Process that will result in the delivery of safe and effective treatment to patients from the highest qualified applicants.

21. When the Legislature declares particular conduct to be unlawful, it is tantamount to categorizing it as injurious to the public." *SEIU*, 104 A.3d at 509 (citation omitted). As set forth herein and in the Verified Petition for Review, the Respondent has failed to comply with Pennsylvania law by engaging in an unlawful, unconstitutional, and inequitable Permitting Process. Allowing the Permitting Process to continue without a stay only furthers the harm caused by the Respondent's unlawful actions.

22. In addition, as provided by the Procurement Code, because any permits that have been awarded were awarded contrary to law and applicants who were not selected lacked any meaningful administrative remedy, the previously awarded permits should be rescinded. 62 P.A. C.S.A. § 1711.2.

WHEREFORE, for all of the foregoing reasons and those alleged in the Verified Petition for Review, Petitioner respectfully requests that this Honorable Court grant this Application for Special Relief in the Nature of a Preliminary Injunction and enter an Order:

1. Preliminarily and permanently enjoining Respondent, its agents, servants, officers, and others from continuing the Permitting Process and issuing additional rounds of permits;

2. Preliminarily and permanently enjoining the applicants who were previously awarded Grower/Processor Permits and Dispensary Permits from continuing the process pending the outcome of this action;

3. Rescinding the previously awarded Grower/Processor Permits and Dispensary Permits; and

4. Granting such other and further ancillary relief that this Honorable Court deems just and appropriate.

Respectfully submitted,

FLORIO PERRUCCI STEINHARDT & FADER, LLC

By: */s/ Seth R. Tipton*
Seth R. Tipton, Esquire
Attorney I.D. No. 310773

Robert A. Freedberg, Esquire
Attorney I.D. No. 7855

Robert M. Donchez, Esquire
Attorney I.D. No. 209505

Stephen J. Boraske, Esquire
Attorney I.D. No. 321312

Attorneys for Petitioner Keystone ReLeaf LLC

Dated: September 8, 2017

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
	:	DOCKET NO.
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

ORDER GRANTING APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY AND PERMANENT INJUNCTION

AND NOW, this _____ day of _____, 2017, upon consideration of Petitioners' Petition for Review and Application for Special Relief in the Nature of a Preliminary and Permanent Injunction, it is hereby **ORDERED** that said Application is **GRANTED**.

IT IS FURTHER ORDERED that Respondent and its agents, servants, and officers and others are hereby **ENJOINED** from continuing to carry out the Permitting Process that is the subject of the Petition for Review pending the outcome of this action.

IT IS FURTHER ORDERED that the previously awarded medical marijuana Grower/Processor and Dispensary Permits are hereby rescinded.

BY THE COURT:

_____

Received 9/8/2017 1:03:15 PM Commonwealth Court of Pennsylvania

Filed 9/8/2017 1:03:00 PM Commonwealth Court
399 MD 2017

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Attorneys for Petitioner Keystone ReLeaf LLC

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEYSTONE RELEAF LLC,	:	
	:	
Petitioner,	:	
vs.	:	DOCKET NO.
	:	
PENNSYLVANIA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, Seth R. Tipton, Esquire hereby certify that on 8th day of September, 2017, a true and correct copy of this APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY AND PERMANENT INJUNCTION AND PROPOSED ORDER were served, via certified mail, on the following entities:

Pennsylvania Department of Health
Office of Medical Marijuana
8th Floor West
625 Forster Street
Harrisburg, PA 17120

Commonwealth of Pennsylvania
The Honorable Josh Shapiro
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

/s/ Seth R. Tipton
Seth R. Tipton, Esquire

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keystone Releaf LLC, Petitioner v. Pennsylvania Department of Health, et al.	:	New Case

PROOF OF SERVICE

I hereby certify that this 8th day of September, 2017, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Attorney General
Service Method:	eService
Service Date:	9/8/2017
Address:	Strawberry Square 16th Floor Harrisburg, PA 17120
Phone:	(71-7) -787-3391

Served:	Pennsylvania Department of Health
Service Method:	First Class Mail
Service Date:	9/8/2017
Address:	Office of Medical Marijuana 8th Floor West 625 Forster Street Harrisburg, PA 17120
Phone:	--
Representing:	Respondent Pennsylvania Department of Health

Served:	Pennsylvania Office of Attorney General
Service Method:	First Class Mail
Service Date:	9/8/2017
Address:	The Honorable Josh Shapiro Pennsylvania Office of Attorney General 16th Floor, Strawberry Square Harrisburg, PA 17120
Phone:	--
Representing:	Respondent Pennsylvania Office of Attorney General

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Seth Robert Tipton

(Signature of Person Serving)

Person Serving:	Tipton, Seth Robert
Attorney Registration No:	310773
Law Firm:	Florio Perrucci Steinhardt & Fader, LLC
Address:	Florio Perrucci ET AL 60 W Broad St Ste 102 Bethlehem, PA 180185721
Representing:	Petitioner Keystone Releaf LLC