

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
OFFICE OF MEDICAL MARIJUANA USE

RECEIVED  
DEPARTMENT OF HEALTH  
2018 JUL 30 PM 4:14  
OFFICE OF THE CLERK

SPRING OAKS GREENHOUSES, INC.,

PETITIONER,

v.

DOH Case No.:

THE DEPARTMENT OF HEALTH,  
OFFICE OF MEDICAL MARIJUANA USE,

RESPONDENT.

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**PETITION FOR FORMAL ADMINISTRATIVE HEARING AND DETERMINATION  
REGARDING UNADOPTED RULE**

Spring Oaks Greenhouses, Inc. ("Spring Oaks"), files this petition for formal administrative hearing and determination regarding unadopted rule pursuant to sections 120.569 and 120.57(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code. In support of this petition, Spring Oaks states as follows:

**Parties**

1. The affected state agency is the State of Florida, Department of Health, Office of Medical Marijuana Use (the "Department"), 4052 Bald Cypress Way, Bin M-01, Tallahassee, Florida 32399-3265. The Department is the state agency authorized to administer section 381.986, Florida Statutes, and to license and regulate medical marijuana treatment centers ("MMTCs"). See §§381.986 & 385.212, Fla. Stat.

2. Spring Oaks is a Florida for profit corporation that operates a nursery in Umatilla, Florida. For purposes of this proceeding, Spring Oaks' address is that of the undersigned.

3. Spring Oaks is represented by John M. Lockwood, Thomas J. Morton, and Devon Nunneley of The Lockwood Law Firm, 106 East College Avenue, Suite 810, Tallahassee, Florida,

32301. Counsels' telephone number is (850) 277-5009; facsimile number is (850) 270-2610; and e-mail addresses are john@lockwoodlawfirm, tj@lockwoodlawfirm, and devon@lockwoodlawfirm.com.

### **Background**

4. In 2014, the Florida Legislature passed the Compassionate Medical Cannabis Act of 2014 which authorized the use of low-THC cannabis for certain medical conditions. As part of the act, the Department was required to license five dispensing organizations to cultivate, process and dispense low-THC cannabis. The Department was to license one Dispensing Organization in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.

5. In or about July 2015, Spring Oaks filed an application for licensure as a Dispensing Organization in the central region pursuant to section 381.986, Florida Statutes (2015). Spring Oaks' application was received, reviewed, evaluated, and scored by the Department in accordance with the provisions of rule 64-4.002, Florida Administrative Code, effective on June 17, 2015.

6. Rule 64-4.002(5) established a panel of three individuals to review and score the applications for licensure as a dispensing organization. The rule required each reviewer to independently review each application and score the application by completing a scorecard. The reviewer's scorecards were then combined to generate an aggregate score for each application and the applicant with the "highest aggregate score" in each region was selected as the region's dispensing organization. R. 64-4.002(5)(a) & (b), Fla. Admin. Code.

7. The Department's methodology for scoring the applications and generating an aggregate score was not described in the rule or the scorecard.

8. In November 2015, the Department denied Spring Oaks' application for licensure

as a Dispensing Organization in the central region. The Department's denial letter did not specify Spring Oaks' application score. The letter merely stated that Springs Oaks' application was denied because it was not the highest scored applicant in the central region. A copy of the Department's denial letter is attached as Exhibit A.

9. Springs Oaks did not challenge the Department's denial and the issue of the Department's scoring vis-à-vis Springs Oaks' application has never been litigated.

10. In 2016, the Florida Legislature passed chapter 2016-123, Laws of Florida, which amended section 381.986 to authorize the use of medical cannabis for certain patients who have terminal conditions. Additionally, Chapter 2016-123 provided a pathway for prior applicants who were not awarded dispensing organization licenses to obtain licenses. The relevant language is as follows:

Section 3. (1) Notwithstanding s. 381.986(5)(b), Florida Statutes, a dispensing organization that receives notice from the Department of Health that it is approved as a region's dispensing organization, posts a \$5 million performance bond in compliance with rule 64-4.002(5)(e), Florida Administrative Code, meets the requirements of and requests cultivation authorization pursuant to rule 64-4.005(2), Florida Administrative Code, and expends at least \$100,000 to fulfill its legal obligations as a dispensing organization; or any applicant that received the highest aggregate score through the department's evaluation process, notwithstanding any prior determination by the department that the applicant failed to meet the requirements of s. 381.986, Florida Statutes, must be granted cultivation authorization by the department and is approved to operate as a dispensing organization for the full term of its original approval and all subsequent renewals pursuant to s. 381.986, Florida Statutes. Any applicant that qualifies under this subsection which has not previously been approved as a dispensing organization by the department must be given approval as a dispensing organization by the department within 10 days after the effective date of this act, and within 10 days after receiving such approval must comply with the bond requirement in rule 64-4.002(5)(e), Florida Administrative Code, and must comply with all other applicable requirements of chapter 64-4, Florida Administrative Code.

(2) If an organization that does not meet the criteria of subsection (1) receives a final determination from the Division of Administrative Hearings, the Department of Health, or a court of competent jurisdiction that it was entitled to be a dispensing organization under s. 381.986, Florida Statutes, and applicable rules, such organization and an organization that meets the criteria of subsection (1) shall both be dispensing organizations in the same region. During the operations of any dispensing organization that meets the criteria in this section, the Department of Health may enforce rule 64-4.005, Florida Administrative Code, as filed on June 17, 2015.

Ch. 2016-123, 3, at 17-18, Laws of Fla. (2016) (emphasis added).

11. According to the above language, any applicant that is determined by the Department, the Division of Administrative Hearings, or any court to be entitled to be a dispensing organization under section 381.986 shall be licensed as such.

12. On November 8, 2016, over 70% of Florida voters approved the Florida Medical Marijuana Legalization Initiative, also known as Amendment 2. The amendment created section 29, Article X of the Florida Constitution and authorized the medical use of marijuana for the treatment of debilitating medical conditions.

13. In 2017, the Florida Legislature substantially amended section 381.986 in an effort to implement Amendment 2. The 2017 changes required the Department to license the existing dispensing organizations as MMTCs and established a process for licensing 10 new MMTCs. The relevant language is as follows:

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(a) The department shall license medical marijuana treatment centers to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification under this section.

1. As soon as practicable, but no later than July 3, 2017, the department shall license as a medical marijuana treatment center any

entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices, under former s. 381.986, Florida Statutes 2016, before July 1, 2017, and which meets the requirements of this section.

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2. The department shall license as medical marijuana treatment centers 10 applicants that meet the requirements of this section, under the following parameters:

a. As soon as practicable, but no later than August 1, 2017, the department shall license any applicant whose application was reviewed, evaluated, and scored by the department and which was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014; which had one or more administrative or judicial challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region under former s. 381.986, Florida Statutes 2014; which meets the requirements of this section; and which provides documentation to the department that it has the existing infrastructure and technical and technological ability to begin cultivating marijuana within 30 days after registration as a medical marijuana treatment center.

§381.986(8)(a), Fla. Stat. (2017) (emphasis added).

14. According to the above language, there are four requirements for an entity that applied for a dispensing organization license to obtain one of the ten new MMTC licenses: (1) an application as a dispensing organization which was reviewed, evaluated, and scored; (2) litigation or final ranking within one point of the highest final ranking in its region; (3) meets the requirements of section 381.986; and (4) provides documentation of the ability to to cultivate marijuana within 30 days.

15. On June 22, 2017, Keith St. Germain Nursery Farms (“KSG”), an applicant in the southeast region, requested that it be registered as a MMTC pursuant to the “within one point” qualification. The Department denied KSG’s request noting that KSG had an aggregate score of

3.2125 and the winning applicant in the southeast region had an aggregate score of 4.4000. KSG challenged the Department's denial on the grounds that the Department relied on unadopted rules in calculating the aggregate scores during the dispensing organization selection process and in determining what constitutes "one point" under section 381.986(8)(a)2.a.

16. In response to the KSG challenge, on September 28, 2017, the Department adopted emergency rule 64ER17-3 in an attempt to implement the "within one point" qualification. Rule 64ER17-3(1) established definitions for "final ranking", "highest final ranking", and "within one point" as follows:

(b) Final Ranking - an applicant's aggregate score for a given region as provided in the column titled 'Final Rank' within the November 2015 Aggregated Score Card incorporated by reference and available at <http://www.floridahealth.gov/programs-and-services/office-of-medical-marijuana-use/medical-marijuana-treatment-centers/dispensing-application-process/index.html>, as the final rank existed on November 23, 2015.

(c) Highest Final Ranking – the final rank with the highest point value for a given region, consisting of an applicant's aggregate score as provided in the column titled "Final Rank" within the November 2015 Aggregated Score Card, as the final rank existed on November 23, 2015.

(d) Within One Point – one integer (i.e., whole, non-rounded number) carried out to four decimal points (i.e., 1.0000) by subtracting an applicant's final ranking from the highest final ranking in the region for which the applicant applied.

Rule 64ER17-3, Fla. Admin. Code

17. According to rule 64ER17-3, an applicant is eligible for a MMTC license if their final ranking was within one integer (carried out to four decimal points) of the winning applicant's final ranking. For example, if the winning applicant's final ranking, *i.e.* the highest final ranking, is 5.5458, the applicant is within one point if their final ranking is 4.5458 or higher.

18. On October 19, 2017, Nature's Way Nursery of Miami, Inc. ("Nature's Way"), an

applicant in the southeast region, challenged the validity of rule 64ER17-3(1)(b), (c), and (d) on the grounds that they were vague, arbitrary and capricious, and exceeded the Department's grant of rulemaking authority.

19. Also on October 19, 2017, the Nature's Way requested that it be registered as a MMTC pursuant to the "within one point" qualification. The Department denied Nature's Way's request noting that Nature's Way was not within one point as set forth in rule 64ER17-3. Nature's Way challenged the Department's denial on the grounds that the Department's calculation was unreasonable, arbitrary, capricious, erroneous and based on an unadopted rule.

20. On October 30, 2017, the Department entered in a final order adopting a settlement between KSG and awarding KSG a MMTC license. That same day, the Department adopted emergency rule 64ER17-7. Rule 64ER17-7 provided that it supersedes rule 64ER17-3, the subject of Nature's Way's rule challenge, and modified the definitions of "final ranking", "highest final ranking" and "within one point" as follows:

(b) Final Ranking – an applicant's aggregate score for a given region as provided in the column titled "Final Rank" or the applicant's regional rank as provided in the column titled "Regional Rank" within the November 2015 Aggregated Score Card, incorporated by reference and available at <http://www.floridahealth.gov/programs-and-services/office-of-medical-marijuana-use/medical-marijuana-treatment-centers/dispensing-application-process/index.html>, as the final rank existed on November 23, 2015.

(c) Highest Final Ranking – the final rank with the highest point value for a given region, consisting of an applicant's aggregate score as provided in the column titled "Final Rank" or the applicant's regional rank as provided in the column titled "Regional Rank" within the November 2015 Aggregated Score Card, as the final rank existed on November 23, 2015.

(d) Within One Point – for the aggregate score under the column "Final Rank" one integer (i.e., whole, non-rounded number) carried out to four decimal points (i.e., 1.0000) or for the regional rank under the column "Regional Rank" one whole number difference,

by subtracting an applicant's final ranking from the highest final ranking in the region for which the applicant applied.

Rule 64ER17-7, Fla. Admin. Code

21. Rule 64ER17-7 included an additional methodology for determining whether an applicant was eligible for a MMTC license under the "within one point" qualification. In addition to the one integer carried out to four decimal points requirement, an applicant could also qualify for a MMTC license if their regional rank was within one whole number of the winning applicant's final regional ranking. For example, in a region with seven applicants, the winning applicant's regional rank, i.e. highest final ranking, would be 7, and the applicant would be within one point of the highest final ranking if their regional rank was 6.

22. Although rule 64ER17-7 purports to expand the pool of applicants that can take advantage of the "within one point" qualification by including a second methodology, the rule expanded the pool by exactly one – KSG. No other applicant qualifies to take advantage of the newly adopted provisions.

23. On November 2, 2017, Nature's Way challenged the validity of rule 64ER17-7(1)(b), (c), and (d) on the grounds that they were vague, arbitrary and capricious, exceeded the Department's grant of rulemaking authority, and contravened the law implemented. Specifically, Nature's Way alleged that by incorporating by reference the November 2015 Aggregate Scorecard into rule 64ER17-7, the Department improperly attempted to validate actions by the Department in 2015 during the dispensing organization selection process that involved faulty calculations and were based on an unadopted rule.

24. On June 15, 2018, Administrative Law Judge ("ALJ") Van Laningham issued a recommended order determining that Nature's Way was entitled to a license under the "within one point" qualification, despite Nature's Way having a final ranking of over 1.5 "points" less than the



highest final ranking and having a regional rank of 3 less than the highest final ranking. *Nature's Way Nursery of Miami, Inc. v. Fla. Dep't of Health*, Case No. 18-0721 (DOAH June 15, 2018.)

25. Also on June 15, 2018, ALJ Van Laningham issued a final order determining that rule 64ER17-7(1)(b), (c), and (d) constitutes an invalid exercise of delegated legislative authority and that the scoring methodology used by the reviewers during the 2015 dispensing organization selection process to determine aggregate scores, and which the Department intended to rely upon in determining the qualifying "within one point" applicants, constitutes an unadopted rule in violation of section 120.54(1)(a), Florida Statutes. *See Nature's Way Nursery of Miami, Inc. v. Fla. Dep't of Health*, Case Nos. 17-5801RE & 18-0720RU (DOAH June 15, 2018).

26. On July 26, 2018, Spring Oaks filed with the Department a request for registration as a MMTC pursuant to section 381.986(8)(a)2.a., Florida Statutes, and section 3 of Chapter 2016-123, Law of Florida (2016). Spring Oaks notified the Department that it meets all statutory criteria to be registered as a MMTC under the "within one point" qualification. It further notified the Department that should the Department determine that Spring Oaks was entitled to be licensed as a dispensing organization, then the Department is required to register Spring Oaks as a MMTC without regard to the 10 license limitation. A copy of Springs Oaks' request for registration is attached as Exhibit B.

27. On July 27, 2018, the Department issued a denial of Spring Oaks' request for registration, concluding that Spring Oaks "did not have final score within one point of the highest scoring applicant in its region." Notably, the Department's letter does not state how it determined that Spring Oaks is not within one point of the highest scoring applicant. Presumably, the Department is continuing to rely on the provisions of rule 64ER17-7 and the 2015 scoring methodology, both of which have been determined to be invalid. A copy of the Department's

denial letter is attached as Exhibit C.

### **Spring Oaks' Substantial Interests**

28. Spring Oaks submitted an application in July 2015 that, pursuant to section 381.986(8)(a)2.a., Florida Statutes, and chapter 2016-123, Laws of Florida (2016), entitle it to registration as a MMTC. The Department's denial of Spring Oaks' request for registration adversely impacts Spring Oaks' substantial interests because it denies Spring Oaks' the opportunity to operate as a MMTC.

29. Spring Oaks is likewise substantially affected by the Department's unadopted rule – the 2015 scoring methodology. Rule 64ER17-7's determination of which applicants qualify under the "within one point" qualification is based entirely on the 2015 scoring methodology. Because the Department's denial of Spring Oaks' registration is based on the "final rank" assigned to Spring Oaks' 2015 dispensing organization application, Spring Oaks is substantially affected by the Department's unadopted rule. Pursuant to section 120.57(1)(e)1., Florida Statutes, the Department is precluded from basing its denial of Spring Oaks' request for registration on an unadopted rule.

### **Statement of How Spring Oaks Received Notice of the Department's Decision**

30. The undersigned received the Department's denial of Spring Oaks' request for registration on July 27, 2018, via electronic mail. This petition is timely as it is filed within 21 days of receipt of the denial. *See* Rule 28-106.111(2), Fla. Admin. Code.

### **Disputed Issues of Material Fact**

31. The disputed issues of material fact include, but are not limited to, the following:

- a. Whether the Department properly calculated the final scores to be awarded to Spring Oaks' and the highest scoring applicant in the central region;

b. Whether the Department correctly calculated Spring Oaks' score as not being within one point of the highest scoring applicant in the central region, as required by section 381.986(8)(a)2.a., Florida Statutes;

c. Whether the Department relied on an invalid rule in denying Spring Oaks' request for registration;

d. Whether the Department relied on an unadopted rule in denying Spring Oak's request for registration;

e. Whether the Department's method for generating aggregate scores is an agency statement of general applicability that violates section 120.54(1)(a), Florida Statutes; and

f. Whether Spring Oaks was entitled to be licensed as a dispensing organization under chapter 2016-123, Law of Fla. (2016).

32. Spring Oaks reserves the right to raise additional disputed issues of material fact and law that may be identified in the future through discovery in this case.

#### **Statement of Ultimate Facts and Law**

33. The Department's denial of Spring Oaks' request for registration is founded solely on the Department's calculation of Spring Oaks' score relative to the highest scoring applicant in the central region. Specifically, the Department erroneously calculated the scores as not being within one point. The Department's calculation is unreasonable, arbitrary, capricious, based on both an invalid rule and an unadopted rule, and otherwise erroneous.

34. The Department's 2015 scoring methodology resulted in "final ranks" that suggested the Department conducted a quantitative review of the applicants when, in fact, the Department only conducted a qualitative review. Rather than score the applicants, the Department only ranked the applicants. The Department's methodology gives the misleading impression that,

for example, an applicant with a “final rank” of 5.5458 is 3.5311 points better than an applicant with a “final rank” of 2.0147. The Department’s decision to convert “ranks” into “scores” was entirely improper and the Department cannot now rely on this action to deny Spring Oaks’ request for registration.

35. The Department’s denial of Spring Oaks’ request for registration is based on an invalid rule. As noted above, rule 64ER17-7 was declared invalid in *Nature’s Way* Case Nos. 17-5801RE & 18-0720RU. The rule was found to be an invalid exercise of delegated legislative authority on the following grounds: (1) the rule enlarges, modified, or contravenes the law implemented; (2) the rule exceeds the Department’s grant of rulemaking authority; and (3) the rule is arbitrary or capricious.

36. The Department’s denial of Spring Oaks’ request for registration is also based on an unadopted rule – specifically, the Department’s 2015 scoring methodology. As noted above, the 2015 scoring methodology, upon which the November 2015 Aggregated Score Card is based, was appropriately determined to be an unadopted rule in *Nature’s Way* Case Nos. 17-5801RE & 18-0720RU.

37. It should be noted that an existing rule found to be invalid is not void until after appellate proceedings have ended. *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642, 653 (Fla. 1st DCA 2009). Thus, rule 64ER17-7 is not void until after the Department’s appeal of the *Nature’s Way* final order has concluded. However, the rule is entirely dependent on the scoring methodology that led to the November 2015 Aggregate Score Card. The *Nature’s Way* final order declared the scoring methodology to be an unadopted rule in violation of section 120.54(1)(a), Florida Statutes. Section 120.56(4), Florida Statutes, provides “[i]f an administrative law judge enters a final order that all or part of an unadopted rule violates s. 120.54(1)(a), the

agency must immediately discontinue all reliance upon the unadopted rule or any substantially similar statement as a basis for agency action.” Thus, the Department is prohibited from relying on the 2015 scoring methodology, and rule 64ER17-7 which incorporated the methodology, as a basis for denying Spring Oaks’ request for registration.

38. To the extent that the Department has attempted to validate or ratify its use of an unadopted rule by incorporating the November 2015 Aggregate Score Card into rule 64ER17-7, the rule constitutes an invalid exercise of its delegated legislative authority. Further, section 120.54(1)(f), Florida Statutes, prohibits an agency from adopting retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute. Nothing gives the Department to authority to adopt such rules. Thus, rule 64ER17-7 cannot retroactively validate or ratify the 2015 scoring methodology.

39. Spring Oaks meets the requirements of section 381.986(8)(a)2.a. and chapter 2016-123, Laws of Florida (2016) and its request for registration should be approved. The Department cannot now correct the fundamental errors committed during the 2015 dispensing organization selection process. Except for the “ranks” on the November 2015 Aggregate Score Card, the Department has no other basis for denying Spring Oaks’ request for registration under section 381.986(8)(a)2.a. As discussed, the Department cannot rely on the score card as it was based on an unadopted rule. Thus, the Department cannot deny Spring Oaks’ request for registration and it must be approved.

#### **Statutes and Rules**

40. The statutes and rules that support the relief requested by Spring Oaks are: sections 120.52, 120.54, 120.56, 120.569, 120.57, and 381.986, Florida Statutes, and chapter 2016-123, Laws of Florida (2016).

**Relief Requested**

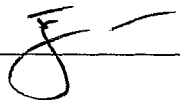
41. Spring Oaks respectfully requests that the Department refer this matter to the Division of Administrative Hearings for a formal administrative hearing, enter a final order granting Spring Oaks' request for registration as a MMTC, award Spring Oaks its reasonable costs and attorney's fees pursuant to section 120.595(4), Florida Statutes, and grant Spring Oaks such further relief as may be deemed appropriate.

  
\_\_\_\_\_  
John M. Lockwood  
Florida Bar No. 28056  
Thomas J. Morton  
Florida Bar No. 13771  
Devon Nunneley  
Florida Bar No. 46234  
THE LOCKWOOD LAW FIRM  
106 East College Avenue, Suite 810  
Tallahassee, Florida 32301  
Tel: 850.727.5009  
Fax: 850.270.2610  
john@lockwoodlawfirm.com  
tj@lockwoodlawfirm.com  
devon@lockwoodlawfirm.com

**Certificate of Service**

I certify that on this 30<sup>th</sup> day of July 2018, I have served a true and correct copy of this document via hand delivery on the following:

Agency Clerk  
Office of the General Counsel  
Florida Department of Health  
4052 Bald Cypress Way, Bin A-02  
Tallahassee, Florida 32399

  
\_\_\_\_\_

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**John H. Armstrong, MD, FACS**  
State Surgeon General & Secretary

**Vision:** To be the Healthiest State in the Nation

November 23<sup>rd</sup>, 2015

Spring Oaks Greenhouses, Inc.  
17323 Lake Street  
Umatilla, FL 32784

Re: Low-THC Cannabis Dispensing Organization Application

Dear Applicant:

Spring Oaks Greenhouses, Inc.'s Application to become a Low-THC Cannabis Dispensing Organization for the Central region has been substantively reviewed, evaluated, and scored by a panel of evaluators according to the requirements of Section 381.986, Florida Statutes and Chapter 64-4, of the Florida Administrative Code. As Spring Oaks Greenhouses, Inc. was not the highest scored applicant in the Central region, your application for the Central region is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. Celeste Philip", written over a circular scribble.

Dr. Celeste Philip  
Deputy Secretary for Health

CB/cc

Cc: Office of the General Counsel

**Florida Department of Health**  
Office of Compassionate Use  
4052 Bald Cypress Way, Bin #A-06  
Tallahassee, FL 32399-3265  
PHONE: 850/245-4444 • FAX 850/245-4748

**www.FloridaHealth.gov**  
TWITTER: HealthyFLA  
FACEBOOK: FLDepartmentofHealth  
YOUTUBE: fdoh  
FLICKR: HealthyFla  
PINTEREST: HealthyFla

Exhibit A

Spring Oaks Greenhouses, Inc.  
November 23<sup>rd</sup>, 2015

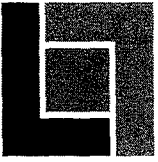
**NOTICE OF RIGHTS**

This notice is agency action for purposes of section 120.569, Florida Statutes. A party whose substantial interest is affected by this action may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. A petition must be filed in writing and must be received by the Agency Clerk within twenty-one (21) days from receipt of this notice. The petition may be mailed to the Agency Clerk, Department of Health, 4052 Bald Cypress Way, BIN #A-02, Tallahassee, FL 32399-1703; hand delivered to the Agency Clerk, Department of Health, 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, FL; or sent by facsimile to (850) 413-8743. Such petition must be filed in conformance with Florida Administrative Code Rules 28-106.201 or 28-106.301, as applicable.

Mediation is not available.

Failure to file a petition within 21 days shall constitute a waiver of the right to a hearing on this agency action.





# LOCKWOOD LAW FIRM

July 26, 2018

*Via Electronic Mail (Christian.Bax@flhealth.gov)*

Director Christian Bax  
Office of Medical Marijuana Use  
Florida Department of Health  
4052 Bald Cypress Way, Bin A-06  
Tallahassee, Florida 32399

**Re: Spring Oaks Greenhouses, Inc.  
Request for Registration as Medical Marijuana Treatment Center**

Dear Director Bax:

This correspondence is provided on behalf of Spring Oaks Greenhouses, Inc. (“Spring Oaks”), for the purpose of requesting registration as a medical marijuana treatment center (“MMTC”) pursuant to section 381.986(8)(a)2.a., Florida Statutes, and section 3 of Chapter 2016-123, Law of Florida (2016).

Section 381.986(8)(a)2.a. provides as follows:

As soon as practicable, but no later than August 1, 2017, the department shall license any applicant whose application was reviewed, evaluated, and scored by the department and which was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014; which had one or more administrative or judicial challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region under former s. 381.986, Florida Statutes 2014; which meets the requirements of this section; and which provides documentation to the department that it has the existing infrastructure and technical and technological ability to begin cultivating marijuana within 30 days after registration as a medical marijuana treatment center.

(Emphasis added).

According to the above language, there are four requirements for an entity that applied for a dispensing organization license to obtain a MMTC license: (1) an application as a dispensing organization which was reviewed, evaluated, and scored; (2) a final ranking within one point of the highest final ranking in its region; (3) meets the requirements of section 381.986; and (4) provides documentation of the ability to cultivate marijuana within 30 days.

## Exhibit B



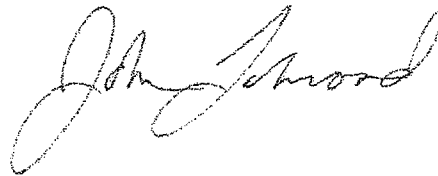
Spring Oaks meets each of these requirements. Spring Oaks filed an application for licensure as a dispensing organization in 2015. Its application was reviewed, evaluated, and scored. Spring Oaks meets the requirements of section 381.986 and has the infrastructure and ability to begin cultivating marijuana within 30 days after registration.

As for the “within one point” qualification, rule 64ER17-7, which sets forth the Department’s methodology for determining which applicants qualify for a license under this provision, is invalid. *See Nature’s Way Nursery of Miami, Inc. v. Fla. Dep’t of Health*, Case Nos. 17-5801RE & 18-0720RU (DOAH June 15, 2018). Similarly, the Department’s scoring methodology used during the 2015 dispensing organization selection process, and which the Department is purportedly relying upon in issuing MMTC registrations under the “within one point” qualification, is an unadopted rule that “led inexorably to extremely misleading results.” *Id.* at ¶¶ 28 & 186. As noted by ALJ Van Laningham, the Department’s scoring methodology has left the Department with “no choice but to deduce a reasonable approximation of the unknowable interval data by adjusting the ordinal data as best as anyone can[.]” *Nature’s Way Nursery of Miami, Inc. v. Fla. Dep’t of Health*, Case No. 18-0721, at ¶98 (DOAH June 15, 2018). Spring Oaks is prepared to present the Department with competent substantial evidence of a reasonable approximation that shows Spring Oaks meets the “within one point” qualification.

Additionally, section 3 of Chapter 2016-123, Law of Florida (2016), provides that a prior dispensing organization applicant who obtains a final determination from the Department that it was entitled to be a dispensing organization shall be licensed as such. As you know, pursuant to section 381.986(8)(a)1., Florida Statutes, all dispensing organizations are required to be registered as MMTCs. Thus, any final determination from the Department that Spring Oaks should have been licensed as a dispensing organization requires the Department to immediately register Spring Oaks as a MMTC, without regard to the number of MMTC licenses available under section 381.986(8)(a)2.a.

Accordingly, we respectfully request that the Department immediately register Spring Oaks as a MMTC. Thank you for your time and consideration in reviewing this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Lockwood". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John M. Lockwood

cc: Nichole Geary