

EXCLUSIVE FOR INSIDERS



## Get ready to hurry up and wait for the next turn of the screw on the 2019 RFA case.

The Department of Health filed a motion this week to dissolve the stay barring the 2019 Request For Application process to move forward, claiming further delays will irreparably harm the process and to allow the department to “keep pace with the rapidly growing demand for medical marijuana.”

“Maintaining adequate supply is a legitimate concern, and leaving the stay in place would exacerbate that problem,” the DOH said in its motion. “The stay is hamstringing the Department’s ability to serve the ever-growing population of patients with debilitating medical conditions. 77,000 patients are currently enrolled in the program, and the Department is averaging over 3,500 new enrollees every month over the last six months.”

**Jeff Brown**, assistant commissioner in charge of the Department of Health’s Medicinal Marijuana Program, said in the motion he was “recently made aware that the appeals would not be scheduled for argument and/or disposition until the fall of 2020.”

“Delaying the disposition of these matters until the fall, at the earliest, will cause the Department irreparable harm,” Brown said. “To date, the Department has been prohibited from reviewing and scoring applications for over six months, even though these matters are accelerated.”

The stay was put in place this past December at the behest of prospective licensees whose applications were disqualified due to corruption of their PDF files, which were submitted electronically. **Josh Bauchner** of Ansell, Aaron & Grimm, who is representing six disqualified applicants, alleged the corrupting of his clients’ PDF files occurred either because of the DOH’s online submission portal or the PDF files obtained from the DOH caused the glitch.



A technical expert report of one of the appellants found the PDF files submitted were free of malware and viruses, and not corrupt at the time of submission to the state. The report also said there are many possible causes of corruption to files submitted over the Internet including something “as simple as an electronic fail anywhere along the wire to potential cyber-attacks.”

The DOH, however, contends it received 15 applications which were affected by corrupted or inaccessible files (six of those applicants also submitted hard copies of the required documents). Of the remaining nine who filed electronically, one of the applicants’ submissions included a ZIP file which, based on guidance from Adobe, is unopenable if used as an attachment to a PDF.

Based on its investigation, the DOH alleges the file corruption of applicants’ files occurred prior to submission and that the electronic submission process was functioning properly and didn’t cause the corruption.

Besides advocating to dissolve the stay, the DOH argued the court could also schedule oral arguments and issue a decision as soon as practicable; or dissolve the stay, in part, and allow the DOH to resume scoring applications pending the disposition of the case.

“A partial dissolution will allow the Department to begin the process of reverifying the components of the applications that require such further review and will not cause any prejudice to the Appellants,” the DOH said.

Bauchner told NJ Cannabis Insider the DOH’s motion offered nothing new and provided no basis to lift the stay.

“It complains that the New Jersey patient population is not being served, but, of course, that directly arises from the very slow roll out of the 2018 awardees and the DOH’s incessant failure to acknowledge the problem with its own portal relating to the 2019 RFA,” he said. “And, tellingly, the DOH continues in failing to explain why it just doesn’t permit applicants to resubmit and score everyone equally and fairly based on merit.”

Bauchner continued by saying the DOH is in the unique position of being able to solve “a problem of its own making,”

“Inexplicably, it refuses to do so, harming patients and operators statewide,” he said. “More motion practice and litigation achieves nothing.”

Bauchner said his response to the motion was due on June 22.

While the litigation of the 2019 RFA continues to plod along, frustration continues to mount for those who applied in last year’s licensing round as well as patients continue to twist in the wind.

Earlier this spring, **Fruqan Mouzon** of McElroy, Deutsch, Mulvaney & Carpenter said in [a NJ Cannabis Insider guest column](#) the blame for the delays on Bauchner’s clients, offering up several solutions for resolving the legal logjam.

Unsurprisingly, Bauchner, [in his response](#) to Mouzon’s piece, was unconvinced.

— *Justin Zaremba*