

EXCLUSIVE FOR INSIDERS

INTO THE WEEDS

Court rejects DOH request to dissolve stay for 2019 RFA case. Resolution nowhere in sight.

The court this week rejected the state Department of Health's motion to dissolve the stay barring it from reviewing, grading and awarding licenses as part of the 2019 Request for Applications, meaning that unless the parties settle the case likely won't be resolved until later this year.

Last month, the DOH filed a motion to dissolve the stay barring the RFA 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."

"Delaying the disposition of these matters until the fall, at the earliest, will cause the Department irreparable harm," said **Jeff Brown**, assistant commissioner in charge of the Department of Health's Medicinal Marijuana Program. "To date, the Department has been prohibited from reviewing and scoring applications for over six months, even though these matters are accelerated."



Jeff Brown (photo by Aristide Economopoulos | For NJ Cannabis Insider)

Josh Bauchner of Ansell, Grimm & Aaron, the attorney representing the prospective applicants, said the "last word remains for oral argument to be set for some time in the fall."

“Hopefully, the DOH will now focus on settling the appeal by scoring all applications on merit so as to best serve the state’s growing medical marijuana patient population rather than engaging in wasteful and dilatory motion practice,” Bauchner said.



Josh Bauchner (photo by Aristide Economopoulos | For NJ Cannabis Insider)

The stay was put in place in December at the behest of prospective licensees whose applications were disqualified due to corruption of their PDF files. Bauchner has alleged the corruption 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 corruption.

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 alleges 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.

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

— *Justin Zaremba*