

EXCLUSIVE FOR INSIDERS

INTO THE WEEDS

Court to decide on stay for 2019 RFA case as early as mid July

The companies who sued the Department of Health over the disqualification of their applications from the 2019 Request for Applications round unsurprisingly want the current stay on the RFA process to remain in effect.

Last week, the DOH filed a motion this week to dissolve the stay barring the 2019 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.”

Josh Bauchner of Ansell, Grimm & Aaron, the attorney representing the prospective applicants, said in his response to the DOH’s motion that “nothing has changed” to warrant the dissolution of the stay.

“The circumstances that existed on December 23, 2019, which warranted the granting of a stay pending appeal, remain the same today and, therefore, the Department’s motion to dissolve the stay should be denied,” Bauchner said.

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. 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.

“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 said a decision on the motion wasn’t expected until sometime after July 7.

“Ironically, one of the applicants filed a request to submit an amicus brief complaining of the delay (i.e., carrying costs) which caused the Court to have to delay the adjudication on the stay to permit briefing on the amicus,” he said. “That said, the Court should have everything by July 7 and hopefully will issue a decision soon thereafter.”

He continued: “If the court stays the course (pun intended) then we are still awaiting oral argument which they may expedite, but is otherwise set for the fall.”

— *Justin Zaremba*