

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

STATE OF MISSOURI, <i>ex rel.</i>	)	
MISSOURI DEPARTMENT OF HEALTH	)	
AND SENIOR SERVICES,	)	
3322 American Drive	)	
Jefferson City, MO 65109,	)	
	)	
Plaintiff/Relator,	)	
	)	
vs.	)	No. 20AC-CC00327
	)	
SREENIVASA RAO DANDAMUDI,	)	
Commissioner, Administrative Hearing	)	
Commission,	)	
	)	
Serve at: U.S. Post Office Bldg.,	)	
131 West High St., 3 <sup>rd</sup> Flr.	)	
Jefferson City, MO 65101,	)	
	)	
Defendant/Respondent.	)	

**AMENDED PETITION FOR WRIT OF PROHIBITION**

Pursuant to Rule 55.33(a), Plaintiff/Relator Missouri Department of Health and Senior Services (“Department”) files this Amended Petition, asking the Court to enter preliminary and permanent writs of prohibition against Defendant/Respondent, a Commissioner on the Missouri Administrative Hearing Commission, who has granted a motion to compel the Department to disclose information that the Missouri Constitution requires it to keep “confidential.”

## SUMMARY

This petition challenges the constitutionality of an order issued by Commissioner Sreenivasa Rao Dandamudi of the Administrative Hearing Commission that compels the Department to produce in discovery confidential information belonging to third-party applicants that the Missouri Constitution prohibits the Department from producing. The challenged order originated in a proceeding in which the petitioner, Heya Kirksville Cultivation, LLC (“Heya Kirksville”), challenged the Department’s denial of Heya Kirksville’s application for a medical marijuana cultivation license.

One of Heya Kirksville’s allegation is that its application was subjected to an arbitrary and capricious scoring process, in which other applicants received different scores for answers that were the same or substantially the same as the ones that Heya Kirksville submitted. In an attempt to prove its claim, Heya Kirksville served requests for admissions on the Department, seeking confirmation that the Department had received certain information from third-party applicants. The Department objected, in part, because the requests required the Department to disclose information that the Missouri Constitution prohibited it from disclosing. Heya Kirksville filed a Motion to Compel.

In opposing Heya Kirksville’s motion, the Department argued that the disclosure sought by Heya Kirksville violated the Constitution and as a result

could, among other problems, make the Department liable to the third-party applicants whose information, including trade secrets and other confidential information, would be disclosed to would-be competitors.

On July 30, 2020, the Commission rejected the Department's argument, and ordered the Department to withdraw the objections premised on the constitutional prohibition and to respond within 30 days. Exhibit 5. That order compelled disclosure only of information from applications filed by entities that had names similar to Heya Kirksville, and that were allegedly under the same ownership. Information sought from the applications of others was denied on other grounds.

On August 31, 2020, the Commission largely reversed the denial, thus requiring the Department to now disclose information from other applications regardless of whether there is an alleged connection between the petitioner and any such applicant, *i.e.*, compelling the disclosure of information submitted to the Department by third parties with the constitutional promise of confidentiality. Exhibit 7.

The Department files this action to prevent the Commission from exceeding its jurisdiction by enforcing its order that requires the Department to produce information that the constitution prohibits the Department from producing.

## **PARTIES**

1. Plaintiff/Relator Department of Health and Senior Services is an agency of the State of Missouri that was created by Section 192.005 of Missouri's Revised Statutes. The Department, through its Section for Medical Marijuana Regulation, is vested with the authority to issue medical marijuana licenses pursuant and subject to Article XIV of the Missouri Constitution. The Department's principal office is located in Cole County, Missouri.

2. Respondent Sreenivasa Rao Dandamudi is a Commissioner of the Missouri Administrative Hearing Commission, and Commissioner Dandamudi entered the orders that are challenged here and from which the Department petitions for relief. The Commission's principal office is located in Cole County, Missouri.

3. Heya Kirksville, a petitioner in the proceeding below, is a Missouri limited liability company that submitted an application for a license to cultivate medical marijuana, and its application was conditionally denied by the Department. Heya Kirksville appealed that denial to the Commission pursuant to Art. XIV(3)(23) as AHC No. 20-0213. Heya Kirksville sought and obtained the order from which the Department petitions for relief.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this case under Sections 530.020 and 536.150 of Missouri Revised Statutes, and Rule 97 of the Missouri Rules of Civil Procedure.

5. Venue lies in this Court under Section 508.010.2 of Missouri Revised Statutes because the parties reside in Cole County.

### **STATEMENT OF FACTS**

6. As a result of a ballot initiative in 2018, Article XIV was added to the Missouri Constitution, and the enabling legislation authorized the Department to issue licenses for medical marijuana, including 60 cultivation licenses, to qualified applicants after a scoring and ranking process. *See* 19 CSR 30-95.050(1)(A).

7. Nearly 600 applicants submitted applications to cultivate medical marijuana.

8. The Department granted cultivation licenses to 60 cultivation applicants and denied the remaining applications, including a provisional denial of the application submitted by Heya Kirksville.

9. Hundreds of applicants appealed the denials of their applications, including Heya Kirksville, which filed its appeal on January 8, 2020.

10. Like many other disappointed applicants, Heya Kirksville included in its appeal a claim that its application was subjected to a scoring process that was arbitrary and capricious. According to Heya Kirksville's appeal, some of the answers submitted by some other, applicants were identical to the answers that Heya Kirksville provided on its unsuccessful application. In particular, Heya Kirksville singled out those answers on which it received a lower score than what other entities received for the same or similar answers (ignoring those answers on which Kirksville Heya received a higher score than what other entities received for the same or similar answers).

11. In seeking to prove its selective allegations of grading disparities, Heya Kirksville served discovery requests on the Department, including requests for admissions, interrogatories, and requests for the production of documents that included requests for information that third-party applicants had submitted with their application. *See* Heya Kirksville's discovery requests, attached hereto as **Exhibit 1**.

12. On June 1, 2020, the Department served its responses to Heya Kirksville's discovery requests, including objections to the requests for information submitted by third-party applicants on the basis that the Missouri Constitution prohibit the Department from disclosing such

information.<sup>1</sup> See Department responses to discovery requests, attached hereto as **Exhibit 2**.

13. After subsequent efforts to meet and confer did not result in a mutually agreeable compromise, Heya Kirksville filed a motion to strike discovery objections and compel responses or, in the alternative, for sanctions on July 6, 2020. See Heya Kirksville's Motion, attached hereto as **Exhibit 3**.

14. The Department filed a response in opposition on July 17, 2020. See Department's response in opposition, attached hereto as **Exhibit 4**.

15. On July 30, 2020, the Commission, by Respondent Commissioner Dandamudi, granted the motion to compel in pertinent part.<sup>2</sup> July 30 Order, attached hereto as **Exhibit 5**.

16. In the July 30 Order, the Commission concluded that the constitutional prohibition found in Article XIV, § 1.3(5) did not apply in discovery. It reasoned that the constitutional prohibition on disclosure only prevented disclosure of the information to the public, like what could

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<sup>1</sup> The Department also objected on the basis that the information was not relevant to the narrow question actually before the Commission, which is not a basis on which the Department seeks relief in this Petition.

<sup>2</sup> The Commission denied Heya Kirksville's request for sanctions. It also denied the Motion to Compel "in all other respects" other than the specified requests that it ordered the Department to provide responses, which included request for admissions numbers 5, 6, 11, 12 and 18-22, interrogatory numbers 7, 12, 15, 24 and 27, and requests for production of documents numbers 3 and 7. See July 30 Order (**Ex. 5**), at 11. But see Aug. 31 Order (**Ex. 7**).

otherwise happen pursuant to Missouri's Sunshine Law.<sup>3</sup> July 30 Order (**Ex. 5**), at 2-3.

17. In sum, the Commission ordered the Department to respond within 30 days as follows:

We grant in part and deny in part Heya Kirksville's motion to compel as follows:

- 1) Requests for admissions: we grant the motion and order the Department to respond to requests 5, 6, 11, 12, and 18 – 22.
- 2) Interrogatories: we grant the motion and order the Department to respond to interrogatories 7, 12, 15, 24, and 27.
- 3) Requests for production: we grant the motion to the extent that we order the parties, consistent with the Department's responses, to cooperate to generate mutually agreeable search terms for electronically stored information for requests 3 (as limited above) and 7.

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<sup>3</sup> As to the Department's relevance objection, the Commission concluded that the information sought by Heya Kirksville was sufficiently relevant to be discoverable (the Commission purported to reserve the issue of admissibility). In doing so, the Commission reasoned that even though the Commission "steps into the shoes" of the Department for purposes of considering the denial of a license (which did not involve any cross comparisons of application), the Commission need not evaluate any application for licensure in the "same way" that the Department did. *Id.* at 5-7. So, even if the Department did not cross-compare applicants' answers, the Commission decided that it did not have to follow that approach, and Heya Kirksville was entitled to discover evidence related to a process that the Department did not use. Although this determination was made in the order challenged here, relief is not sought in connection with that specific ruling and is limited, instead, to the constitutional issue.



July 30 Order (**Ex. 5**), at 11-12.<sup>4</sup> The grant was made “in part” because of uncertainty regarding the type of facility license requested by third-party applicants whose application information Heya Kirksville sought.

18. Since the Commission issued its July 30 Order, it has issued orders in other cases adopting that same rationale. August 12, 2020 Order in *Kings Garden Midwest, LLC v. Department of Health and Senior Services*, AHC No. 20-0524 (copy attached as **Exhibit 6**); August 31, 2020, Order in *Verdant Creations Missouri 2-5, LLC v. Department of Health and Senior Services*, NAHC No. 20-1120 (copy attached as **Exhibit 8**).

19. On August 31, after Heya Kirksville clarified that the applications it sought were, like Heya Kirksville’s, applications for cultivation licenses, the Commission removed restrictions on the July 30 Order. August 31 Order, attached hereto as **Exhibit 7**. The Commission thus compels the Department to disclose information from applications submitted to the Department by third parties, even though that information was filed by those third parties with the constitutional promise that the Department would hold that information confidential.

20. This Court has the authority to issue a writ of prohibition to prevent the unlawful exercise of power by the Commission.

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<sup>4</sup> Having filed this Petition, the Department has not yet produced the information to Heya Kirksville.

21. The writ of prohibition should issue for all the reasons set forth in this Amended Petition and the Suggestions filed in support of the original Petition, including the fact that the Department and other applicants stand to be irreparably harmed if the Commission's order requiring the Department to violate the Constitution is enforced. The Department could be subjected to liability to the third parties whose confidential information was disclosed. But most important, confidential information regarding other applicants and their owners would be disclosed—to their competitive and perhaps personal disadvantage—without notice to them.

22. Prohibition is the only remedy available to the Department to correct the wrongs committed by Defendant/Respondent.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff Department of Health and Senior Services, for the reasons stated herein and in the Suggestions in Support previously filed, respectfully requests that the Court:

(a) immediately issue a preliminary writ of prohibition, pursuant to Rule 97.05,

i. staying the order issued by the Defendant Administrative Hearing Commission by Defendant Commissioner Sreenivasa Rao Dandamudi on July 30, 2020, and

ii. requiring Defendants to answer this Petition within 30 days so that the Court is able to make a final determination of the merits of this dispute, and

(b) upon consideration of that answer, issue a permanent writ of prohibition, permanently preventing the Commission from enforcing its order and ruling that the Commission exceeded its authority and subjected the Department to irreparable harm when the Commission erroneously ruled that that Article XIV, § 1.3(5) of the Missouri Constitution does not prohibits the disclosure of the specified information belonging to any third-party applicants to Defendant Heya Kirksville Cultivation, LLC, and

(c) for such further relief as the Court deems necessary and just.

The writ should issue and this Petition be granted because Article XIV, § 1.3(5) of the Missouri Constitution prohibits the Department from disclosing the confidential information belonging to other applicants that the Commission has ordered the Department to disclose to Heya Kirksville.

Respectfully submitted,

TUETH KEENEY COOPER MOHAN  
& JCKSTADT, P.C.

/s/ James R. Layton

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, a true and accurate copy of the foregoing was served via electronic mail, read receipt requested, upon the following:

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/s/ James R. Layton