

September 4, 2020

Via Electronic Mail

Amy Moore  
Deputy Director and Counsel  
Section for Medical Marijuana Regulation  
Department of Health and Senior Services  
P.O. Box 570  
Jefferson City MO, 65102

Re: DHSS's False and Misleading Letter Concerning Confidential Application Information

Ms. Moore:

I represent Heya Kirksville Cultivation, LLC ("Heya Kirksville") in connection with its appeal of DHSS's denial of its medical marijuana cultivation license application. Today I received a copy of the attached letter DHSS sent to all medical marijuana license applicants, which falsely advises applicants that as a result of certain AHC rulings they can "expect that [their] application—including its most sensitive aspects—will be disclosed and become public." Your letter further suggests that this outcome is a direct result of actions my client has taken.

These statements are at best misleading and at worst blatantly false. Heya Kirksville has never asked DHSS to produce to it copies of other applicants' submissions. What it has requested is that DHSS admit the authenticity of documents Heya Kirksville already possesses (including application answers submitted by other facilities under common ownership or that voluntarily provided parts of their applications to my client). As we've previously explained (and the AHC has agreed), DHSS's objections to this simple, routine discovery are legally baseless.

Your suggestion that the AHC's orders will result in the imminent public disclosure of applicants' submissions is also wrong. We seek disclosure of documents in a discovery context, not that they be generally released. As we've advised DHSS for several months, the confidentiality of application materials can—and we believe should—be maintained through entry of a protective order requiring the parties to maintain such confidentiality. Such protective orders are routinely entered in most lawsuits. Despite Heya Kirksville's repeated offers to stipulate to entry of a protective order, DHSS has declined to do so. Thus, to the extent there is any risk of application materials being made public, the fault lies with DHSS, not my client. We have consistently offered to agree to a protective order that would protect these applications from becoming public. But DHSS has never agreed to that or proposed an alternative.

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Finally, your letter advises applicants that DHSS's resistance is based on the Constitution's "promise" of confidentiality. But as all litigants currently engaged in discovery with DHSS in these license appeals can surely attest, DHSS's refusal to provide basic discovery stems not from its desire to protect applicants, but rather DHSS's desire to avoid any serious scrutiny of its badly flawed scoring system. My client and other applicants are entitled to get to the bottom of the countless scoring disparities that plagued that system.

DHSS's letter would be charitably characterized as misleading, if not properly characterized as a scare tactic using false information. We ask that you withdraw it and clarify to applicants that no one has asked for the information to become publicly available.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles W. Hatfield". The signature is fluid and cursive, with a large initial "C" and a stylized "H".

Charles W. Hatfield