

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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NATURE'S WAY NURSERY OF MIAMI
INC.,

Petitioner,

v.

DOAH Case No. 18-0721

DEPARTMENT OF HEALTH,

Respondent.

FINAL ORDER

This matter comes before the Department for consideration of a Recommended Order and entry of a Final Order. On June 13, 2018, a Recommended Order was entered by Administrative Law Judge John G. Van Laningham following a hearing held pursuant to section 120.57(1), Florida Statutes. Subsequent to the hearing and prior to entry of this Final Order by the Department, the parties entered a Settlement Agreement, which is attached as Exhibit A and incorporated by reference into this Final Order.

The Recommended Order is rejected in its entirety. *See also Final Order, Plants of Ruskin Inc. v. Dep't of Health*, Case. No. 17-0791 (DOH August 22, 2017). Nature's Way Nursery of Miami, Inc., is granted a license and shall be registered as an medical marijuana treatment center pursuant to section 381.986(8)(a)2.a., Florida Statutes.

This proceeding is closed.

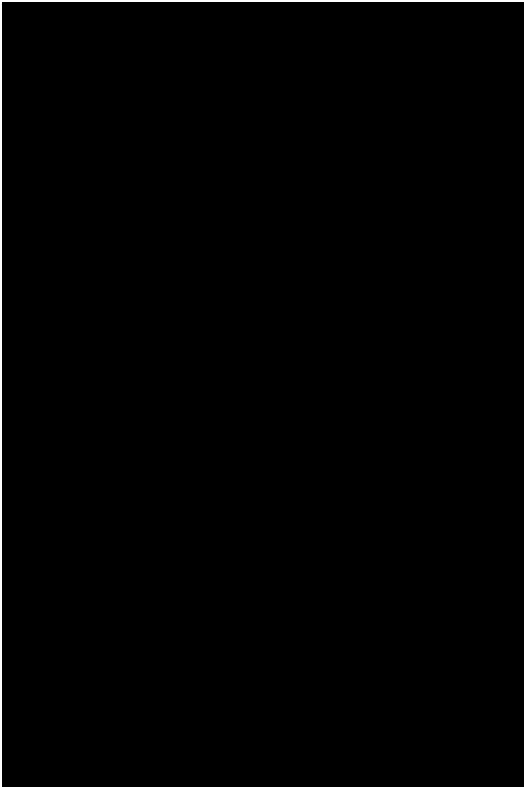
DONE AND ORDERED this 13th day of July, 2018, in

Tallahassee, Leon County, Florida.

Celeste Philip, MD, MPH
State Surgeon General

By: Cindy Dick
Cindy Dick
Assistant Deputy Secretary for Health

Copies furnished to:



NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS MAY BE COMMENCED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILE FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE MUST BE FILED WITHIN 30 DAYS OF FILING OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been furnished by U.S. Mail, inter-office mail, electronic transmission , or by hand-delivery to each of the above-named persons this 13th day of July, 2018.

Shannon Lewis

Agency Clerk
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-3251
(850) 245-4005 telephone

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

NATURE'S WAY NURSERY
OF MIAMI, INC.,

Petitioner,

DOH Case No. 2018-0012

vs.

FLORIDA DEPARTMENT OF HEALTH,
an executive branch agency of
the State of Florida,

Respondent.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into this 13th day of July, 2018, by and between Petitioner Nature's Way Nursery of Miami, Inc. ("Nature's Way"), and Respondent, State of Florida Department of Health ("Department" or "DOH") (each a "Party" and together, the "Parties").

PREMISES

WHEREAS, Nature's Way timely filed with the Department its application to become a Dispensing Organization in the Southeast Region of Florida pursuant to section 381.986, Florida Statutes (2014);

WHEREAS, the Department reviewed, evaluated, and scored Nature's Way's application along with other applicants in the Southeast Region;

WHEREAS, Nature's Way did not receive the highest score in the Southeast Region and the Department denied Nature's Way's application;

WHEREAS, the Florida Legislature enacted Senate Bill 8-A ("SB 8-A") on June 9, 2017, to implement Section 29, Article X of the Florida Constitution and to create a unified regulatory structure for the medical use of marijuana in Florida;

WHEREAS, SB 8-A amended section 381.986, Florida Statutes, in relevant part, to require the Department to issue medical marijuana treatment center licenses to certain applicants who were denied a license under the previous statutory scheme;

WHEREAS, the Governor of Florida signed SB 8-A into law on June 23, 2017;

WHEREAS, Nature's Way timely requested a license pursuant to SB 8-A, which the Department denied on January 17, 2018;

WHEREAS, also on January 17, 2018, Nature's Way filed a Petition for Formal Administrative Proceedings (assigned DOAH Case Nos. 18-0721 and 18-0720RU) challenging: (i) the Department's denial of Nature's Way's request for a license pursuant to SB 8-A ("License Challenge") and (ii) the Department's alleged reliance on certain statements alleged to be unadopted rules ("Unadopted Rule Challenge");

WHEREAS, Nature's Way also filed a petition for formal administrative proceedings (assigned DOAH Case No. 17-5801RE) challenging the Department's Emergency Rule 64ER17-7 ("Emergency Rule Challenge");

WHEREAS, on June 15, 2018, an Administrative Law Judge issued a Final Order in the Emergency Rule Challenge and the Unadopted Rule Challenge ("DOAH Final Order"); and issued a Recommended Order in the License Challenge.

WHEREAS, the Parties desire to resolve the disputes between them and therefore intend to enter into this Agreement to approve Nature's Way to serve as a medical marijuana treatment center under applicable laws; agree that Nature's Way qualifies as a medical marijuana treatment center under section 381.986(8)(a)2.a., Florida Statutes (2017); and agree for the Department to license and register Nature's Way as a medical marijuana treatment center.

NOW THEREFORE, in consideration of the mutual promises of the Parties, the sufficiency of which is acknowledged, the Parties agree as follows:

1. The Premises above are hereby incorporated into this Agreement, as if fully set forth herein.
2. The Parties intend and do hereby agree as follows:
 - (a) Nature's Way certifies to the Department that it:
 - (i) Meets the requirements under current law to be licensed and registered as a medical marijuana treatment center; and
 - (ii) Has the existing infrastructure and technological ability to begin cultivating marijuana within thirty (30) days after licensure and registration as a medical marijuana treatment center.
 - (b) Upon execution of this Agreement, the Department will enter a Final Order in the License Challenge: (1) adopting and incorporating this Agreement and (2) licensing and registering Nature's Way as a medical marijuana treatment center. Nature's Way stipulates to entry of such Final Order and

waives any right to appeal such Final Order. The Final Order will be consistent with the terms and obligations of this Agreement.

- (c) Nature's Way waives any right to oppose, contest, or take any position adversarial to the Department in any appeal or other judicial review of the DOAH Final Order. Nature's Way and the Department agree that the outcome of any appeal of the DOAH Final Order will not affect the validity or enforceability of this Settlement Agreement.
- (d) Nature's Way waives its right to recover attorneys' fees in the Emergency Rule Challenge, the Unadopted Rule Challenge, and the License Challenge. As such, the Parties will each bear their own costs, expenses, and attorneys' fees associated with the License Challenge, the Unadopted Rule Challenge, and the Emergency Rule Challenge.
- (e) Within ten (10) calendar days after the Department licenses and registers Nature's Way as a medical marijuana treatment center, Nature's Way will:
 - (i) post a \$5 million performance bond issued by an authorized surety insurance company rated in one of the three highest rating categories by a nationally recognized rating service; or
 - (ii) provide an irrevocable letter of credit of \$5 million payable to the Department; or
 - (iii) provide \$5 million cash to the Department.

The Parties agree that the failure to timely post the bond or provide a letter of credit will result in the revocation of Nature's Way's license.

3. Thirty (30) days or less after its licensure and registration as a medical marijuana treatment center, Nature's Way shall, in accordance with rule 64-4.005(2), Florida Administrative Code, notify the Department that it is ready to begin cultivation. Nature's Way will comply with rule 64-4.005(3), -(4), and -(5), Florida Administrative Code; section 381.986, Florida Statutes; and any other applicable laws or rules promulgated by the Department.

4. This Agreement constitutes the entire Agreement between the Parties with regard to the License Challenge, the Unadopted Rule Challenge, and the Emergency Rule Challenge and the grant or award of a license and registration to Nature's Way to become a medical marijuana treatment center. The Parties intend that this Agreement be binding and enforceable.

5. This Agreement shall be construed in accordance with the Laws of the State of Florida. The Parties agree that the proper forum to enforce provisions of this Agreement shall be in Circuit Court, Leon County, Florida.

6. This Agreement shall inure to the benefit of and be binding upon each Party, including each Party's successors, assigns, Agency head, and administrators, and shall be enforceable against them.

7. This Agreement, including exhibits, constitutes the entire agreement between the Parties, including anyone acting for, associated with, or employed by them, concerning all matters that could have been raised in the License Challenge, the Unadopted Rule Challenge, or the Emergency Rule Challenge. This Agreement supersedes any prior discussions, agreements, or understandings between the Parties; there are no promises, representations, or agreements between the Parties other than as set forth herein.

8. Nature's Way expressly waives its right to (1) any hearing pursuant to sections 120.569, 120.57, and 120.68, Florida Statutes (2017); (2) any making of findings of fact and conclusions of law by the Department; and (3) all further and other proceedings, whether administrative or judicial, to which Nature's Way may be otherwise entitled under the law or the rules promulgated by the Department, relating to the License Challenge, the Unadopted Rule Challenge, the Emergency Rule Challenge, or the issues raised in those proceedings. However, nothing in this Agreement prohibits Nature's Way from participating in any proceeding that attempts to challenge or contest the validity of this Agreement, and Nature's Way may intervene in any such proceeding.

9. This Agreement is and shall be deemed jointly drafted and written by the Parties and shall not be construed or interpreted against the Party originating or preparing it. Each Party has the right to consult with counsel, has consulted with counsel, and knowingly and freely entered into this Agreement.

10. This Agreement does not constitute an admission of wrongdoing or error by either Party with respect to the License Challenge, the Unadopted Rule Challenge, the Emergency Rule Challenge, or any other matter.

11. The Parties, by their entry into this Agreement, do not intend to and do not create or convey any rights enforceable by any person or entity not a party to this Agreement.

12. This Agreement shall be in full force and effect upon execution by each of the respective Parties' authorized signatories, and effective on the date of the last or final signature.

13. This Agreement may be executed in counterparts.

14. No modification or waiver of any provision of this Agreement shall be valid unless a written amendment to the Agreement is completed and properly executed by the Parties.

NATURE'S WAY NURSERY OF MIAMI, INC.

By: *Dawn F. Wilson*
Dawn Wilson

Title: Owner/President

Date: 7/13/18

DEPARTMENT OF HEALTH

By: *Cindy Dick*
Cindy Dick

Title: Assistant Deputy Secretary for Health

Date: 7/13/2018