

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

RECEIVED  
DEPARTMENT OF HEALTH  
15 DEC 14 PM 4:27  
OFFICE OF THE CLERK

ALPHA FOLIAGE, INC.,

Petitioner,

v.

CASE NO.:

DEPARTMENT OF HEALTH,

Respondent.

**PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, Alpha Foliage, Inc. ("Alpha Foliage"), files this Petition for Formal Hearing Involving Disputed Issues of Material Fact pursuant to section 120.57(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code, to contest the Department of Health's (the "Department") preliminary approval of Hackney Nursery Company's application to become a Low THC Cannabis Dispensing Organization for the Northwest region and the denial of Alpha Foliage's application to become a Low THC Cannabis Dispensing Organization for the Northwest region. In support thereof, Petitioner states:

**Agency Affected**

1. The affected agency is the Department of Health, Office of Compassionate Use, 4052 Bald Cypress Way, Bin #A-06, Tallahassee, Florida 32399-3265. The Department is the state agency responsible for the issuance of licenses to (and the regulation of) Low THC Cannabis Dispensing Organizations ("Dispensing Organizations").

**Petitioner's Substantial Interests**

2. The petitioner is Alpha Foliage, Inc., 18455 SW 264<sup>th</sup> Street, Homestead, Florida 33031-1883. Alpha Foliage timely filed an application to become the Low THC Cannabis Dispensing Organization for the Northwest region pursuant to section 381.986, Florida Statutes

and Chapter 64-4, Florida Administrative Code. Alpha Foliage's substantial interests are affected because its application to become the Low THC Cannabis Dispensing Organization for the Northwest region was denied by the Department. For the purpose of this proceeding, the address, telephone number and email address of Alpha Foliage is that of its undersigned counsel.

### **Notice of Agency Determinations**

3. Alpha Foliage received notice of the Department's denial of its application on November 23, 2015. (See, Exhibit A, attached hereto). Additionally, this petition challenges the approval of the application filed by Hackney Nursery Company ("Hackney Nursery") because only one Low THC Cannabis Dispensing Organization can be approved for the Northwest region. (See, Exhibit B, attached hereto). This petition has been filed within twenty-one days of the denial of Alpha Foliage's application and the approval of Hackney Nursery's application.

### **Disputed Issues of Material Fact**

4. The disputed issues of material fact in this case include whether the application filed by Alpha Foliage is the best application submitted for the Northwest region and, as such, should have been scored higher than the Hackney Nursery application and all other applications filed for the Northwest region, and whether the application filed by Hackney Nursery and all applications filed for the Northwest region meet the mandatory requirements of section 381.986, Florida Statutes and Chapter 64-4, Florida Administrative Code.

### **Ultimate Facts**

5. The application filed by Alpha Foliage complies with all mandatory requirements of section 381.986, Florida Statutes and Chapter 64-4, Florida Administrative Code. In addition, it is the best application submitted for the Northwest region and Alpha

Foliage should be selected as the Low THC Cannabis Dispensing Organization for the Northwest region.

**Statutes and Rules That Require Reversal**

6. The statutes and rules that require reversal of the Department's proposed action include sections 120.57(1), 120.60, and 381.986, Florida Statutes and Chapter 64-4, Florida Administrative Code.

**Relief Sought by Petitioner**

WHEREFORE, Petitioner, Alpha Foliage, Inc., respectfully requests:

- a) that this petition be transferred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a hearing involving disputed issues of material pursuant to section 120.57(1), Florida Statutes; and
- b) that a recommended order and a final order be entered selecting Alpha Foliage as the Low THC Cannabis Dispensing Organization for the Northwest region.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2015.

  
**CYNTHIA S. TUNNICLIFF** (FBN 134939)  
[Cynthia@penningtonlaw.com](mailto:Cynthia@penningtonlaw.com)

**BRIAN A. NEWMAN** (FBN 004758)  
[Brian@penningtonlaw.com](mailto:Brian@penningtonlaw.com)  
PENNINGTON, P.A.  
215 South Monroe Street, 2nd Floor  
Tallahassee, Florida 32301  
Telephone: (850) 222-3533  
Facsimile: (850) 222-2126

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**John H. Armstrong, MD, FACS**  
State Surgeon General & Secretary

**Vision:** To be the Healthiest State in the Nation

November 23<sup>rd</sup>, 2015

Alpha Foliage, Inc.  
18455 SW 264th Street  
Homestead FL 33031-1883

Re: Low-THC Cannabis Dispensing Organization Application

Dear Applicant:

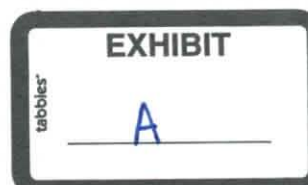
Alpha Foliage, Inc.'s Application to become a Low-THC Cannabis Dispensing Organization for the Northwest region has been substantively reviewed, evaluated, and scored by a panel of evaluators according to the requirements of Section 381.986, Florida Statutes and Chapter 64-4, of the Florida Administrative Code. As Alpha Foliage, Inc. was not the highest scored applicant in the Northwest region, your application for the Northwest region is denied.

Sincerely,

Dr. Celeste Philip  
Deputy Secretary for Health

CB/cc

Cc: Office of the General Counsel





**NOTICE OF RIGHTS**

This notice is agency action for purposes of section 120.569, Florida Statutes. A party whose substantial interest is affected by this action may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. A petition must be filed in writing and must be received by the Agency Clerk within twenty-one (21) days from receipt of this notice. The petition may be mailed to the Agency Clerk, Department of Health, 4052 Bald Cypress Way, BIN #A-02, Tallahassee, FL 32399-1703; hand delivered to the Agency Clerk, Department of Health, 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, FL; or sent by facsimile to (850) 413-8743. Such petition must be filed in conformance with Florida Administrative Code Rules 28-106.201 or 28-106.301, as applicable.

Mediation is not available.

Failure to file a petition within 21 days shall constitute a waiver of the right to a hearing on this agency action.

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**John H. Armstrong, MD, FACS**  
State Surgeon General & Secretary

**Vision:** To be the Healthiest State in the Nation

November 23<sup>rd</sup>, 2015

Hackney Nursery Company  
PO Box 160  
Greensboro, FL 32330-0160

Re: Low-THC Cannabis Dispensing Organization Application

Dear Applicant:

I am pleased to inform you that Hackney Nursery Company's Application to become a Low-THC Cannabis Dispensing Organization for the Northwest region has been substantively reviewed, evaluated, and scored by a panel of evaluators according to the requirements of Section 381.986, Florida Statutes and Chapter 64-4, of the Florida Administrative Code. As your application received the highest score for the Northwest region, your application is granted. Hackney Nursery Company is approved as the dispensing organization for the Northwest region of Florida.

Hackney Nursery Company has 10 business days to post a \$5 million performance bond in accordance with Rule 64-4.002(5)(e), of the Florida Administrative Code. The original bond, payable to the Florida Department of Health, must be received by the Department no later than 5:00 PM EST on December 9<sup>th</sup>, 2015. If the performance bond is canceled and Hackney Nursery Company fails to file a new bond with the Department in the required amount on or before the effective date of cancellation, Hackney Nursery Company's approval shall be revoked.

Hackney Nursery Company must notify the Department that it is prepared to be inspected and seek authorization to begin cultivation, processing, and dispensing. The following deadlines, as outlined in Rule 64-4.005, of the Florida Administrative Code, apply.

**Cultivation**

Hackney Nursery Company has 75 days from this approval to request Cultivation Authorization. No less than 30 calendar days prior to the initial cultivation of low-THC cannabis Hackney Nursery Company shall notify the Department that it is ready to begin cultivation, is in compliance with Section 381.986, F.S., and Chapter 64-4, of the Florida Administrative Code, and is seeking Cultivation Authorization. Failure to meet the deadline to seek Cultivation Authority may result in the revocation of the Department's approval. Please note, no low-THC cannabis plant source material may be present in any Dispensing Organization facility prior to Cultivation Authorization.

EXHIBIT

tabbles

B

Hackney Nursery Company  
November 23<sup>rd</sup>, 2015

Processing

No less than 10 calendar days prior to the initial processing of low-THC cannabis, Hackney Nursery Company must notify the Department that it is ready to begin processing, is in compliance with Section 381.986, F.S., and Chapter 64-4, of the Florida Administrative Code, and is seeking Processing Authorization.

Dispensing

Hackney Nursery Company must begin dispensing derivative product within 210 calendar days of being granted cultivation authorization. No less than 10 calendar days prior to the initial dispensing of derivative product, Hackney Nursery Company must notify the Department that it is ready to begin dispensing, is in compliance with Section 381.986, F.S., and Chapter 64-4, of the Florida Administrative Code, and is seeking Dispensing Authorization. Failure to meet the deadline to begin dispensing may result in the revocation of the Department's approval.

Finally, submission of an application for Dispensing Organization approval constitutes permission for entry by the Department at any reasonable time, into any Dispensing Organization facility to inspect any portion of the facility; review the records required pursuant to Section 381.986, F.S., or Chapter 64-4, of the Florida Administrative Code; and identify samples of any low-THC cannabis or Derivative Product for laboratory analysis, the results of which shall be forwarded to the Department.

Once again, congratulations on receiving approval to become the Low-THC Dispensing Organization for the Northwest region. Should you have any questions about this approval, please contact the Florida Department of Health, Office of Compassionate Use.

Sincerely,



Dr. Celeste Philip  
Deputy Secretary for Health

CB/cc  
Cc: Office of the General Counsel



**NOTICE OF RIGHTS**

This notice is agency action for purposes of section 120.569, Florida Statutes. A party whose substantial interest is affected by this action may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. A petition must be filed in writing and must be received by the Agency Clerk within twenty-one (21) days from receipt of this notice. The petition may be mailed to the Agency Clerk, Department of Health, 4052 Bald Cypress Way, BIN #A-02, Tallahassee, FL 32399-1703; hand delivered to the Agency Clerk, Department of Health, 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, FL; or sent by facsimile to (850) 413-8743. Such petition must be filed in conformance with Florida Administrative Code Rules 28-106.201 or 28-106.301, as applicable.

Mediation is not available.

Failure to file a petition within 21 days shall constitute a waiver of the right to a hearing on this agency action.