

# FAX COVER SHEET

*12/14/15  
SR*

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TO

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COMPANY

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FAXNUMBER      18504138743

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FROM              David Buck

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DATE              2015-12-14 21:57:23 GMT

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RE                IN RE: Tree King Tree Farm Petition for Administrative Hearing

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## COVER MESSAGE

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**THE STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

12/14/15  
SR

TREE KING – TREE FARM, Inc.,

Petitioner,

v.

CASE NO. \_\_\_\_\_

STATE OF FLORIDA,  
FLORIDA DEPARTMENT OF HEALTH

Respondent.

\_\_\_\_\_ /

**PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, Tree King-Tree Farm, Inc. ("Tree King"), pursuant to sections 120.569 and 120.57, Florida Statutes, Rule 28-106.201, Florida Administrative Code, U.S. Const. amend XIV and Florida Const. art. I, § 9, Tree King hereby respectfully petitions for an administrative hearing regarding the Department of Health's denial of its application for licensure as a 'dispensing organization' under section 381.986, Florida Statutes ("the Application"). As grounds for this Petition, Tree King alleges as follows:

**THE PARTIES**

1. The affected agency is the Department of Health ("the DOH"), 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, Florida 32399.
2. Tree King is a Florida corporation whose mailing address is: 4903 State Road 54, New Port Richey, Pasco County, Florida 34652.
3. Tree King has continuously operated as a registered nursery in the State of Florida for more than thirty years, and possesses a valid certification from the Florida Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants.

4. Tree King has retained the undersigned counsel and is obligated to pay reasonable attorney fees for their services.

#### **PETITIONER'S SUBSTANTIAL INTEREST**

5. Pursuant to section 381.986(5)(b), Florida Statutes, Tree King is a qualified nursery that possesses a valid certificate of registration with the Department of Agriculture.

6. On July 8, 2015, Tree King submitted a timely application for approval as a "dispensing organization" pursuant to section 381.986, Florida Statutes, and received notice on November 23, 2015, that its application was denied.

7. Tree King invested heavily in the licensing process and assembled a team to conduct operations as a dispensing organization pursuant to section 381.986, Florida Statutes. As such, the denial of its application will have a substantial impact on Tree King, both substantively and financially.

#### **NOTICE**

8. Tree King received notice on November 23, 2015 when the DOH published its decision to its public internet website. A copy of the notice is attached hereto as Exhibit "A".

#### **DISPUTED ISSUES OF MATERIAL FACT**

9. At all times relevant, the DOH indicated to applicants that Section 120.60, F.S., sets the statutory requirements for licensing.

10. Section 120.60(1), Florida Statutes requires, in pertinent part, that "An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law."

11. Section 120.60(1), Florida Statutes further provides that "Any application for a license which is not approved or denied within the 90 day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a

recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.”

12. The DOH failed to approve or deny Tree King’s application within the 90 day period outlined by Section 120.60.

13. DOH’s failure to timely approve or deny Tree King’s application entitles Tree King to be issued a default license under section 120.60, Florida Statutes.

#### **ULTIMATE FACTS ALLEGED**

14. DOH’s denial of Tree King’s application was untimely and Tree King is entitled to the immediate issuance of a default license pursuant to section 120.60, Florida Statutes.

15. DOH’s denial of Tree King’s application constitutes a denial of due process and is inconsistent with fundamental fairness.

#### **RULES AND STATUTES THAT ENTITLE PETITIONER TO RELIEF**

16. The rules and statutes entitling Tree King to relief include, but not necessarily limited to, Chapter 128-106, Florida Administrative Code, and chapter 381, and Sections 120.569 and 120.57, Florida Statutes.

#### **RELIEF SOUGHT**


WEREFOR, Tree King respectfully requests that the Division of Administrative Hearings:

- a) Conduct a formal hearing on this petition pursuant to Sections 120.569 and 120.57, Florida Statutes;
- b) Issue a final order finding that Tree King is entitled to the immediate issuance of a default license, pursuant to section 120.60(1).
- c) Award Tree King attorney fees and costs; and,

d) Provide Tree King any and all such other relief that the Administrative Law Judge  
deems appropriate.

Dated 12/14/15

Respectfully submitted,  
Robert L. Buck P.A.  
Counsel for the Petitioner  
PO Box 15146  
Brooksville, FL 34604  
Telephone: (352) 584-2062  
[email@attorneybuck.com](mailto:email@attorneybuck.com)

By:   
ROBERT BUCK, ESQ.  
Florida Bar No. 86439

# EXHIBIT "A"

**Mission:**

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



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

**Rick Scott**  
Governor

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

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

Tree-King Tree Farm, Inc.  
P.O. Box 12158  
Tallahassee, FL 32317

Re: Low-THC Cannabis Dispensing Organization Application

Dear Applicant:

Tree-King Tree Farm, 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 Tree-King Tree Farm, 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

**Florida Department of Health**  
Office of Compassionate Use  
4052 Bald Cypress Way, Bin #A-06  
Tallahassee, FL 32309-3285  
PHONE: 850/245-4444 • FAX 850/245-4748

**www.FloridaHealth.gov**  
TWITTER: HealthyFLA  
FACEBOOK: FL Department of Health  
YOUTUBE: fhdh  
FLICKR: HealthyFla  
PINTEREST: HealthyFla

Tree-King Tree Farm, Inc.  
November 23<sup>rd</sup>, 2015

**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.