

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

FILED
April 15, 2020
ADMINISTRATIVE
HEARING COMMISSION

MO CANN DO, INC.)	
)	
Petitioner,)	
)	
v.)	Case No. 20-0232
)	
MISSOURI DEPARTMENT OF)	
HEALTH AND SENIOR SERVICES)	
)	
Respondent.)	

FIRST AMENDED PETITION

Petitioner MO CANN Do, Inc., through counsel, appeals the attached decision by Respondent Missouri Department of Health and Senior Services (“DHSS”), which constituted an arbitrary, capricious, erroneous, and unlawful refusal to issue a Missouri medical marijuana cultivation facility license to MO CANN Do, Inc. Petitioner states the following in support of its appeal:

1. On November 6, 2018, a majority of Missouri voters supported Amendment 2, which authorized the creation of a regulated medical marijuana industry in Missouri. Mo. Const. art. XIV, § 1.
2. Amendment 2 charged DHSS with implementing its provisions, which included the authority to grant or refuse licenses to cultivate marijuana for medical use.
3. In or around June 2019, DHSS promulgated a series of regulations in Title 19 of the Missouri Code of State Regulations and published applications for medical marijuana facility licenses, pursuant to authority granted in Amendment 2.

4. On August 19, 2019, MO CANN Do, Inc. submitted a timely application for a Missouri medical marijuana cultivation facility license through DHSS's online application submission portal, which application was subsequently assigned application reference number 10700.

5. On December 26, 2019, DHSS conveyed a "NOTICE OF APPLICATION DENIAL" ("Denial") to MO CANN Do, Inc. regarding application number 10700. See Exhibit 1.

6. The Denial identified two reasons that MO CANN Do, Inc.'s application was denied:

- a. "failure to meet the criteria of the following sections(s) of title 19 of the Missouri Code of State Regulations: 19 CSR 30-95.040(2)(B)[;]" and
- b. that "pursuant to the result of the scoring and ranking procedures referenced in 19 CSR 90-95.025(4)(C)-(D), [MO CANN Do, Inc.'s] application is ranked below those ranked facilities to which the department is issuing licenses."

7. This appeal is timely pursuant to § 621.120, RSMo and 19 CSR 30-95.025(6)(B), as MO CANN Do, Inc. filed its petition within thirty days of DHSS sending its December 26, 2019 Denial.

8. MO CANN Do, Inc. is qualified for licensure under Amendment 2 and the relevant DHSS regulations, and therefore, entitled to an order awarding it a Missouri medical marijuana cultivation facility license.

MO CANN Do, Inc. satisfied all the minimum standards required to receive a Missouri medical marijuana cultivation facility license.

9. On or about May 24, 2019, DHSS promulgated emergency rule 19 CSR 30-95.025, which became effective June 3, 2019.

10. Subpart 19 CSR 30-95.025(4)(A) states that “[t]he minimum standards for licenses and certifications can be met by providing all material required by 19 CSR 30-95.040(2) in order to show, as applicable—”

- Authorization to operate as a business in Missouri;
- That the entity is ultimately majority owned by natural persons who have been residents of Missouri for at least one (1) year;
- That the entity is not under substantially common control as another entity or a combination of other entities in violation of 19 CSR 30-95.040(3)(C)-(D);
- That the entity is not within one thousand (1000) feet of an existing elementary or secondary school, daycare, or church, or, if a local government allows for closer proximity to schools, daycares, and churches, that the entity complies with the local government’s requirements;
- That the entity can comply with any local government zoning laws specific to the entity’s type of facility other than applicable local government requirements regarding proximity to schools, daycares, or churches; and
- That the entity will not be owned, in whole or in part, or have as an officer, director, board member, or manager, any individual with a disqualifying felony offense.

11. An applicant who does not satisfy all the minimum standards is disqualified or otherwise deemed ineligible to receive a medical marijuana facility license.

12. On the date it applied for a Missouri medical marijuana cultivation facility license, and at all relevant times, MO CANN Do, Inc. satisfied the minimum standards required to be shown under 19 CSR 30-95.025(A), in that:

- MO CANN Do, Inc. is a Missouri corporation that has enjoyed continuous authorization to operate as a business in Missouri since its July 30, 2019 incorporation;
- Natural persons who have been residents of Missouri for at least one year own more than 50% of the economic interests and more than 50% of the voting interests in MO CANN Do, Inc., which 19 CSR 30-95.010(18) defines as satisfying the “majority owned” minimum standard;
- MO CANN Do, Inc. is not under substantially common control as another entity or a combination of other entities in violation of 19 CSR 30-95.040(3)(C)-(D);
- The proposed site for MO CANN Do, Inc.’s medical marijuana cultivation facility (7009 Old Highway 66, Cuba, Missouri 65453) is more than 1,000 feet from an existing elementary or secondary school, daycare, or church;
- MO CANN Do, Inc. and/or its proposed facility site can comply with any local government zoning laws specific to Missouri medical marijuana cultivation facilities; and
- No owner, officer, director, board member, or manager of MO CANN Do, Inc. has a disqualifying felony offense, as defined in Amendment 2.

13. In the context of minimum standards for licensure, DHSS only cites 19 CSR 30-95.040(2)(B) in its December 26, 2019 Denial, thereby conceding that MO CANN Do, Inc. satisfies all the other minimum standards for licensure and/or submitted all the other information 19 CSR 30-95.040(2) requires a facility license applicant to submit in order to show that it satisfies the minimum standards for licensure.

14. Subpart 19 CSR 30-95.040(2)(B) asks for the following information: “[l]egal name of the facility, including fictitious business names, and a certificate of good standing from the Missouri Office of the Secretary of State[.]”

15. Due to a clerical error, MO CANN Do, Inc. mistakenly submitted its Certificate of Incorporation from the Missouri Office of the Secretary of State, rather than a Certificate of Good Standing. See Exhibits 2 and 3.

16. Each cultivation facility license application required submission of approximately 100 documents and narrative responses, and despite its diligent quality control reviews, MO CANN Do, Inc. was unaware that it had not filed the particular Missouri Secretary of State document that DHSS wanted until it received the Denial on December 26, 2019.

17. When it filed its cultivation facility license application, and at all relevant times, MO CANN Do, Inc. satisfied the relevant minimum standard, in that it had “authorization to operate as a business in Missouri,” irrespective of what 19 CSR 30-95.040(2) identifies as the preferred method to demonstrate this.

18. Moreover, Missouri courts have long held that a certificate of incorporation evidences a corporation’s right to do business in Missouri. See, e.g., A. W. Mendenhall Co. v. Booher, 226 Mo. App. 945, 48 S.W.2d 120, 122 (1932) (“While the above states the general rule, the appellate courts in our state have held that the certificate of incorporation issued by the secretary of state to a corporation is a final determination of its right to do business[.]”) (*citations omitted*).

19. Upon receiving the December 26, 2019 Denial, MO CANN Do, Inc. submitted a December 31, 2019 variance request to DHSS (pursuant to 19 CSR 30-95.025(2)), asking for either (a) permission to correct the clerical error by substituting a Certificate of Good Standing

for its Certificate of Insurance; (b) an order agreeing that a Certificate of Incorporation is sufficient evidence of MO CANN Do, Inc.'s authorization to operate as a business in Missouri.

20. DHSS denied MO CANN Do, Inc. any relief under the variance request.

21. The minimum standard for licensure is "authorization to operate as a business in Missouri," which MO CANN Do, Inc. has possessed at all relevant times, not "ability to submit a Certificate of Good Standing."

22. MO CANN Do, Inc.'s "Good Standing" status is a public record freely available on the Missouri Secretary of State's website, and not part of the evaluation criteria competitively scored to determine which applicants receive a license.

23. Accordingly, granting MO CANN Do, Inc.'s December 31, 2019 variance request would not have granted it an unfair advantage over other license applicants.

24. In the alternative, DHSS previously accepted MO CANN Do, Inc.'s Certificate of Incorporation as evidence of its authorization to operate as a business in Missouri and/or waived the obligation to submit a Certificate of Good Standing, and is therefore estopped from refusing to issue a cultivation facility license MO CANN Do, Inc.'s based on the missing Certificate of Good Standing.

25. In its rules, DHSS promised to review every facility license application for completeness and stated that it "will notify an applicant if an application is incomplete and will specify in that notification what information is missing. Applicants will be given seven (7) days to provide missing information." 19 CSR 30-95.040(1)(B)(4).

26. Approximately one month after submitting its cultivation facility license application, MO CANN Do, Inc. received a September 24, 2019 letter from DHSS. See Exhibit

4.

27. Therein, DHSS stated it had reviewed MO CANN Do, Inc.'s cultivation facility license application and "has determined it to be incomplete."

28. DHSS also stated in the September 24, 2019 letter that it "will not be able to assist an applicant in the completion of the rejected application *other than by identifying areas of missing information as stated below.*" (emphasis added).

29. Nothing in the September 24, 2019 letter notified MO CANN Do, Inc. that its cultivation facility license application was incomplete (by virtue of not having a Certificate of Good Standing) or specified that a Certificate of Good Standing was missing.

30. Accordingly, DHSS implicitly accepted MO CANN Do, Inc.'s Certificate of Incorporation as evidence of its authorization to operate as a business in Missouri and/or waived the obligation to submit a Certificate of Good Standing.

31. DHSS should be estopped from subsequently taking the position reflected in its December 26, 2019 Denial, i.e., that MO CANN Do, Inc.'s cultivation facility license application was deficient because it was missing a Certificate of Good Standing.

MO CANN Do, Inc.'s responses to the 79 evaluation criteria-based questions should have been collectively scored in the top 60 cultivation facility license applicants.

32. Amendment 2 authorized DHSS to establish a system to numerically score competing medical marijuana license applicants when more applicants apply than the minimum number of available licenses.

33. The constitutional minimum number of cultivation facility licenses is 60, which DHSS established as the maximum unless more are needed to meet demand from qualifying patients. 19 CSR 30-95.050(1)(A).

34. DHSS received approximately 557 applications for those 60 medical marijuana cultivation facility licenses.

35. The numerical scoring system is based on an analysis of the ten evaluation criteria identified in Amendment 2.

36. Subparts 19 CSR 30-95.025(4)(C)-(D) establish procedures and rules surrounding the evaluation criteria scoring, including that cultivation facility license applications will be ranked based on the total score they received for their responses to 79 questions designed to determine how well an applicant satisfied the ten evaluation criteria.

37. DHSS hired a third party contractor to score the cultivation facility license applicants' responses to the 79 evaluation criteria-based questions.

38. Subparts 19 CSR 30-95.025(4)(C)-(D) establish procedures and rules surrounding the numerical scoring of the evaluation criteria-based scoring, including that cultivation facility licenses will be ranked based on the total score they received for their responses to 79 questions designed to determine how well an applicant satisfied the evaluation criteria identified in Amendment 2.

39. DHSS hired a third party contractor to score the cultivation facility license applicants' responses to the 79 evaluation criteria-based questions.

40. Most of the 79 evaluation criteria-based questions were to be scored using DHSS's "0-10 Point Scale" scoring method, which meant the responses could receive one of the following four scores:

- **0 --- Unsatisfactory** - Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims.

- **4 --- Satisfactory** - Response meets minimum expectations; offers no significant benefits beyond the minimum expectations; no significant weaknesses exist; reasonable confidence in the proposed approach or ability to fulfill claims.
- **7 --- Superior** - Response offers some benefits beyond the minimum expectations; no material weaknesses exist; confidence in the proposed approach or ability to fulfill claims.
- **10 --- Distinctive** - Response promises significant benefits beyond the minimum expectations; answer presents innovative, and/or best-in-class solutions; high confidence in the proposed approach or ability to fulfill claims.

41. On December 26, 2019, DHSS published a list ranking the approximately 557 cultivation facility license applicants by their scores.

42. With the exception of applicants who, upon information and belief, were disqualified or otherwise deemed ineligible to receive licenses, the applicants ranked in the top 60 by score were approved to receive cultivation facility licenses.

43. The lowest-scoring cultivation facility applicant approved to receive a license received a score of 1479.41, establishing this as the cutoff to receive cultivation facility licenses.

44. MO CANN Do, Inc. was ranked two spots lower, with a score of 1477.77, just 1.64 points below the cutoff.

45. But for arbitrary and subjective scoring, erroneous or negligent scoring, computational errors, technological issues, and/or other unacceptable scoring-related mistakes, MO CANN Do, Inc.'s score on its cultivation facility license application would have been higher

than 1479.41, meaning it would have been in the top 60 and entitled to receive a cultivation facility license.

46. For example, MO CANN Do, Inc.’s responses to Questions 44 and 56 received a score of zero.

47. MO CANN Do, Inc.’s responses to Questions 44 and 56 were within the applicable word count limit and complied with the redaction requirements.

48. Moreover, MO CANN Do, Inc.’s principals collectively have many decades of experience owning and operating sophisticated businesses in highly-regulated industries, including several principals with experience owning and operating medical marijuana facilities licensed in other states.

49. By any reasonable objective standard, the responses were at least entitled to a modest score of 4.

50. Had MO CANN Do, Inc. received a score of 4 on *just one of those two questions*, its score would have exceeded 1479.41, and it would have been ranked in the top 60 scores.

51. Additionally, during the August 2019 application period, MO CANN Do, Inc. submitted a manufacturing license application, which was assigned application reference number 10702 (“Application #10702”).

52. Many of MO CANN Do, Inc.’s responses to the 79 evaluation criteria-based questions on its cultivation facility license Application 10700 were substantively identical to MO CANN Do, Inc.’s responses to the evaluation criteria-based questions on its manufacturing facility license Application 10702. Despite being substantively identical, these responses inexplicably received inconsistent scores from DHSS.

53. One such example involves Question 48, which asked “How will the business set pricing, initially and thereafter, based on supply and demand?”

54. On Application #10700, MO CANN Do, Inc. submitted a substantively identical to Question 48 as MO CANN Do, Inc. submitted on its Application #10702.

55. Despite being substantively identical, Application #10700 received a score of “4” on Question 48, while Application 10702 received a score of “10.”

56. The difference between a score of “4” and a score of “10” on Question 48 is equal to 3.6 points, which would move MO CANN Do, Inc.’s cultivation facility license application above the 1479.41 threshold.

57. Another example involves Question 56, which asked “Will your security exceed the minimum requirements established by Rule in regard to interior public spaces where an agent identification card is not required for access, if so how?”

58. On Application #10700, MO CANN Do, Inc. submitted a very similar answer to Question 56 as MO CANN Do, Inc. submitted on its Application #10702, with some non-substantive changes.

59. Despite being substantively identical, Application #10700 received a score of “0” on Question 56, while Application 10702 received a score of “7.”

60. The difference between a score of “0” and a score of “7” on Question 56 is equal to 19 points, which would move MO CANN Do, Inc.’s cultivation facility license application well above the 1479.41 threshold.

61. Logically, when questions like Questions 48 and 56 do not call for a different answer based on facility type, two identical responses should receive the same score from DHSS.

62. This is consistent with language in DHSS’s “Medical Marijuana Application Scorer’s Guide,” which states in pertinent part that: “It is imperative that every response is scored in a consistent manner for all applicants. . . . In doing so, a scorer must score every response consistently. For example, if two applicants applying for the same facility type provide identical responses to a question, the score *must* be the same.” (emphasis added). A true and correct copy of the Medical Marijuana Application Scorer’s Guide is attached hereto as **Exhibit 5**.

63. The logic underlying the language in the “Medical Marijuana Application Scorer’s Guide” is just as persuasive when applied to identical responses to identical questions on applications for different types of facility licenses.

64. Accordingly, each of MO CANN Do, Inc.’s identical or substantively identical responses is entitled to the highest score awarded to MO CANN DO, Inc. for that question.

65. Arbitrary and subjective scoring, erroneous or negligent scoring, computational errors, technological issues, and/or other unacceptable scoring-related mistakes were also the cause of improperly depressed scores on several other responses on MO CANN Do, Inc.’s cultivation facility license application, evidence of which will be presented at the hearing in this matter.

RELIEF

66. Coupled with the fact that it had authorization to operate as a business in Missouri, MO CANN Do, Inc. responses to the 79 evaluation criteria-based questions should have collectively been scored higher than 1479.41, thereby entitling it to be approved to receive a cultivation facility license.

67. Accordingly, the Commission should exercise its authority under 19 CSR 30-95.025(6)(C)(1) to award a cultivation facility license to MO CANN Do, Inc.

68. Moreover, as the prevailing party, MO CANN Do, Inc. requests an award of its reasonable fees and expenses incurred herein, as DHSS's denial of MO CANN Do, Inc.'s cultivation facility license application was not substantially justified and no special circumstances make an award unjust.

WHEREFORE, Petitioner MO CANN Do, Inc. requests the Commission's order granting relief under this petition and (a) directing DHSS to award it a cultivation facility license; (b) awarding MO CANN Do, Inc. its reasonable fees and expenses; and (c) granting such further relief as the Commission deems just and proper.

Respectfully submitted,

ARMSTRONG TEASDALE, LLP

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ewalter@atllp.com

Attorneys for Petitioner MO CANN Do, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed via the ACH's e-filing portal and sent via electronic mail on April 15, 2020 to:

Richard M. Maseles
110 Crestmere Ave
Columbia, Missouri 65203
(573) 356-5148
richard@richardmaseles.com

Attorney for Department of Health and Senior Services

/s/ Eric M. Walter

FW: MMMP New Business Application Update

----- Forwarded message -----

From: **MMMP** <mmmp-noreply@mo.mycompliance.com>

Date: Thu, Dec 26, 2019 at 12:07 PM

Subject: MMMP New Business Application Update

To: <jenneneotto@gmail.com>



Missouri Medical Marijuana Program

Dear Jennene,

We regret to report that your Missouri Medical Marijuana New Business application has been denied.

Denial Reason: December 26, 2019 To: MO CANN Do, Inc., 10700 NOTICE OF APPLICATION DENIAL We regret to inform you your application for a medical marijuana facility license is hereby DENIED for failure to meet the criteria of the following section(s) of Title 19 of the Missouri Code of State Regulations: 19 CSR 30-95.040(2)(B) Please note that in addition to your application for a medical marijuana facility license being DENIED for the foregoing reasons, pursuant to results of the scoring and ranking procedures referenced in 19 CSR 30-95.025(4)(C)-(D), your application is ranked below those ranked facilities to which the department is issuing licenses. Pursuant to 19 CSR 30-95.025(6)(A)1 and 19 CSR 30-95.025(6)(B), you may appeal this decision by filing a petition with the Missouri Administrative Hearing Commission within thirty (30) days of the date this decision is sent, which is the date stated above. Lyndall Fraker Director, Section for Medical Marijuana Regulation

Your application reference number is 10700.

If you have any questions, please feel free to contact the MMMP at [\(573\) 751-6580](tel:573-751-6580) or [\(866\) 219-0165](tel:866-219-0165) or via email mmfacilities@health.mo.gov.

Click [here](#) to log in.

Sincerely,
Missouri Medical Marijuana Program

Please do not reply to this email. This mailbox is not monitored, and you will not receive a response. For assistance, please contact mmfacilities@health.mo.gov. For technical support, please contact support-mo@mycompliance.com.

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STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation of

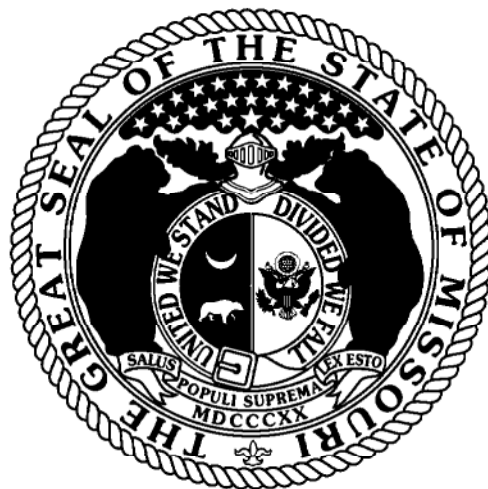
MO CANN Do, Inc.
001377219

have been received and filed in the Office of the Secretary of State, which Articles, in all respects, comply with the requirements of General and Business Corporation Law.

NOW, THEREFORE, I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do hereby certify and declare this entity a body corporate, duly organized this date and that it is entitled to all rights and privileges granted corporations organized under the General and Business Corporation Law.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 30th day of July, 2019.


Secretary of State



STATE OF MISSOURI



John R. Ashcroft
Secretary of State

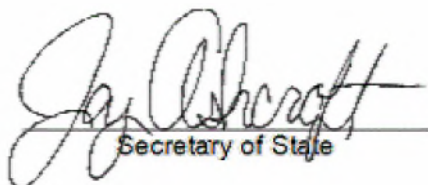
CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

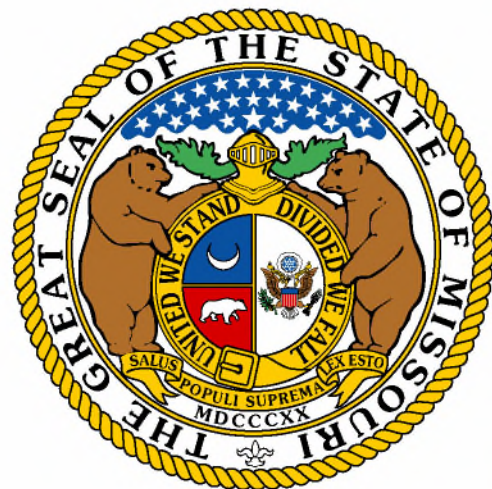
I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

MO CANN Do, Inc.
001377219

was created under the laws of this State on the 30th day of July, 2019, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 27th day of December, 2019.


Secretary of State



Certification Number: CERT-12272019-0030

September 24, 2019

Dear Cultivation Facility Applicant 10700,

Thank you for submitting a facility application to the Missouri Department of Health and Senior Services Section for Medical Marijuana.

Our department reviewed your application and has determined it to be incomplete. In order to process applications within the deadline established under law while maintaining consistent unbiased review, the Department will not be able to assist an applicant in the completion of the rejected application other than by identifying areas of missing information as stated below. While we do not endorse any specific subject matter expert, you may elect to seek outside assistance from a private consultant at your own expense if you require further assistance in fulfilling the application minimum requirements.

Applicants have seven (7) calendar days from notification of rejection to provide the necessary missing information pursuant to 19 CSR 30-95.040(1)(B)4, or 19 CSR 30-95.040(1)(C) for transportation facilities. Your facility application has been rejected for the reason(s) listed below.

Ownership Structure

The **Ownership Structure Form** and **Written Description and/or Visual Representation** failed to provide adequate delineation of every individual's percentage of economic and voting interest of the facility applying for licensure or certification.

Please delete the current Ownership Structure form and upload a new Ownership Structure form within the Documents section of the application. The new form should list the Full Name and Tax Number (or SSN) for all Entities* that own **any** portion of the economic or voting interest of the Facility Applicant as follows:

- Provide the individual name(s) and identifying information of **all** persons associated with **each** listed Business Entity*; and
- Provide the % of **Economic** Interest and the % of **Voting** Interest **respective to each Individual** natural person listed as it relates to the **Facility applying for licensure or certification** for the purpose of calculating and verifying majority ownership
 - % of Economic Interest when totaled for all persons listed should equal 100%
 - % of Voting Interest when totaled for all persons listed should equal 100%

In addition to the completed Ownership Structure Form, please provide a **written description or visual representation of the facility's ownership structure** to support all entities and their subsidiaries as a separate upload in the **Documents** section of the system. If an individual listed is part of a subsidiary entity, the entity must be named as well (with tax ID). In the written description or visual representation, be sure that all owners of subsidiary entities are named, with percent interest in the subsidiary entity noted for each individual.

***19 CSR 30-95.010 Definitions:** "Entity" means a natural person, corporation, professional corporation, nonprofit corporation, cooperative corporation, unincorporated association, business trust, limited liability company, general or limited partnership, limited liability partnership, joint venture, or any other legal entity.

Proof of Residency

Per documentation submitted, the entity failed to provide **Proof of Missouri Residency** for one or more of the persons listed in the Person of Interest section of the application.

Exhibit 4

Worksheets & Worksheet Attachments

Our review team has identified one or more of the uploaded MM Facility **Worksheets** requested in 19 CSR 30-95.025. (4)(B)1-10 does not comply. Upon resubmission, if the Department deems all other application minimum requirements have been timely met, the redacted Worksheets and Worksheet attachments will be electronically passed to the Blind Scorer in their original file format regardless of the failure to properly redact. Per rule, response to evaluation criteria questions within the Worksheets and Worksheet attachments that are not properly redacted will not be scored. Therefore, please use this seven day period to review all uploaded worksheets to ensure you have followed the directions delineated on each respective MM Facility Worksheet(s). It may be necessary to delete current worksheets and upload a new, replacement worksheet in accordance with the worksheet instructions. For new worksheets templates please visit:

<https://health.mo.gov/safety/medical-marijuana/how-to-apply-fi.php>

Per rule, responses to evaluation criteria questions that are not properly redacted will not be scored. View our website: <https://health.mo.gov/safety/medical-marijuana/how-to-apply-fi.php> as well as the Redaction Matrix Document and Facility Frequently Asked Questions for more assistance.

You have not fully or completely responded to all inquiries on MM Facility Worksheet(s) in one or more of the following ways:

- Failure to redact or provide unredacted versions of or, in the alternative, anonymize via use of initials, one or more worksheets or worksheet attachments.
Written responses to these questions must not refer to applicant facility business names and must refer to all individuals by title and initials only, e.g. "Owner A.E.M." or "Principal Officer R.W.M." If an applicant follows these directions, no redactions are necessary. However, if an applicant chooses to provide responses with names of applicant facilities or individuals included, the facility business names and any names, addresses, or social security numbers of individuals must be redacted. Finally, if redacted responses for Evaluation Criteria Questions are submitted, the applicant must also submit an un-redacted version of that same document. Unredacted versions of those same worksheet and worksheet attachments should be submitted separately.
- Worksheets and file attachments must be properly redacted. Worksheet attachments should be redacted in a way that ensures the content intended for redaction is completely obscured upon downloading and displaying the electronic document and cannot be altered.
- Uploaded worksheet(s) were omitted or unable to be opened by the reviewing agency.
- File(s) associated with MM Facility Worksheet(s) are illegible.
- The uploaded file(s) for MM Facility Worksheet(s) do not appear to pertain to the related worksheet requirement.
- Your response(s) on one or more of the MM Facility Worksheet(s) does not appear to pertain to the worksheet requirement.
- One or more of the MM Facility Worksheet(s) exceeded the allowable number of attachments per person.
- The file(s) uploaded for MM Facility Worksheet(s) does not provide evidence as requested.
- Your response to some of the worksheet question(s) was left blank or omitted.
- A "Yes" or "No" response was not indicated.
- The attachment uploaded for MM Facility Worksheet(s) includes more pages than allowed.
- Description of experience for one or all principles officers and managers was omitted from MM Facility Worksheet(s).
- No attachments are allowed for upload with MM Facility Worksheet(s) 3, 16-18, 39-41.

- Temporary ID provided for one or more MM Facility Worksheet(s) is not consistent and/or unique to the applicant.
- Facility Application ID was not included on one or more MM Facility Worksheet or worksheet attachments.

Provisions for the regulation of medical marijuana are within Article XIV of the Missouri Constitution and 19 CSR 30-95. You can find Article XIV, complete rules, answers to frequently asked questions, and other information regarding the Medical Marijuana Program by visiting our website at <https://medicalmarijuana.mo.gov>

Applicants will not be permitted to submit a new application in lieu of a rejected application. To search and update your rejected application, please login to the MO Medical Marijuana Registry and click on the **Applications** button appearing on the left hand side of the screen. Click on the appropriate Application ID to launch the rejected application and begin the edit and update process. **REMINDER: After uploading files or editing data, be sure you click the "SAVE" button to commit your changes before resubmitting your application to the Department.**

Any applications with information missing upon the department's second review, as required by 19 CSR 30.95.040 and 19 CSR 30-95.025 (4), will be considered incomplete and must be denied. Therefore, it is imperative you thoroughly review the rejected application and provide all information required pursuant to 19 CSR 30.95.040 and 19 CSR 30-95.025 (4) upon submission. **You must resubmit your application by 5:00 p.m. Central Standard Time on 10/1/2019** . The system will not prevent an applicant from resubmitting an application past the due date. **If your rejected application is not received by this deadline, it will be considered incomplete.** Questions may be directed to the Medical Marijuana Program by e-mail at mmfacilities@health.mo.gov Please include your Application ID and Primary Contact Information (First and Last Name) listed within your application. The Department will only correspond with the Primary Contact listed within the application.

Sincerely,

An d r e a B a l k e n b u s h

Missouri Department of Health and Senior Services
Director, Medical Marijuana Facility License and Compliance Program

DHSS Medical Marijuana Application Scorer’s Guide

General Instructions

As part of the facility license application process, the Department of Health and Senior Services is tasked with ranking medical marijuana facility applications through a competitive scoring system. To that end, the Department created questions based on the scoring topics mandated in Article XIV of the Missouri Constitution. Scorers are required to score each response provided by the applicants in the Scoring Response Form using the criteria and points in the Evaluation Scoring Criteria Table:¹

Evaluation Criteria Scoring Table	
Answer	Points
Question on 0-10 Point Scale	
Unsatisfactory - Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims.	
Satisfactory - Response meets minimum expectations; offers no significant benefits beyond the minimum expectations; no significant weaknesses exist; reasonable confidence in the proposed approach or ability to fulfill	
Superior - Response offers some benefits beyond the minimum expectations; no material weaknesses exist; confidence in the proposed approach or ability to fulfill claims.	
Distinctive - Response promises significant benefits beyond the minimum expectations; answer presents innovative, and/or best-in-class solutions; high confidence in the proposed approach or ability to fulfill claims.	
Satisfactory / Unsatisfactory	
Satisfactory - Response meets minimum expectations; no significant weaknesses exist; reasonable confidence in the proposed approach or ability to fulfill claims.	
Unsatisfactory - Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims.	
Yes / No	
Yes (when a preferred response) - Response indicates assent or agreement.	
No (when an undesirable response) - Response indicates negation, dissent, or denial.	
No / Yes	
No (when a preferred response) - Response indicates negation, dissent, or denial.	
Yes (when an undesirable response) - Response indicates assent or agreement.	

EXHIBIT 5

Every question will yield a maximum of ten points and a minimum of zero points. There are three types of questions: 0-10 Sliding Scale Questions, Satisfactory/Unsatisfactory Questions, and Yes/No Questions. The 0-10 Sliding Scale Questions require the scorer to assess the response and rate it as "Unsatisfactory" (0 points); Satisfactory (4 points); Superior (7 points); or Distinctive (10 points). For these questions, the scorer may **only** award 0, 4, 7, or 10 points. When analyzing a response, you must use the descriptions in the table above when assigning these numbers to an answer. The Satisfactory/Unsatisfactory and Yes/No questions may receive only a score of 0 or 10 points..

Department rules require that the same individual score each question if possible.² A scorer may be assigned to score only a few of the total questions, or even just one question. It is imperative that every response is scored in a consistent manner for all applicants. Some of the questions and answers may require a scorer to use his or her own professional knowledge and expertise in scoring the responses. **In doing so, a scorer must score every response consistently. For example, if two applicants applying for the same facility type provide identical responses to a question, the score must be the same.**

If scores vary significantly from other scores for the same question, those scores may be rescored. If an answer is rescored, the first score is discarded and the second score will stand.³

General guidance:

No outside assistance: Each question is to be scored by the individual scorer assigned to the question. The scorer may not consult with anyone else on how to score a specific question. A scorer may ask general, procedural questions to the project manager assigning the questions to be scored, but only the scorer assigned to the question may determine a score. A scorer may only use their professional knowledge and expertise in scoring a question, and cannot use any resource materials other than what is provided by the project manager in the scoring room. Resource materials provided in the scoring room shall include at least a copy of the department's publicly available FAQs but may also include other materials deemed relevant or necessary by the project manager.

Questions Subject to different interpretations: Some of the 0-10 Scale Questions may be open to multiple reasonable interpretations for what information is being sought. A scorer must score the response if it is responsive to a reasonable interpretation of the question. For example: Question 4 provides:

Describe how the background of the principal officers and managers will positively reflect or align with the community in which your business will be located

Applicants may interpret the phrases "positively reflect" or "align with" in different ways. As long as the answer addresses a reasonable interpretation of these terms, it should be scored using the evaluation criteria table. If you determine the answer provided has no relation to any reasonable interpretation of the question or "lacks any detail or clarity," the Evaluation Criteria Scoring Table requires it be scored as Unsatisfactory.

² 19 CSR 30-95.025(4)(C)4

³ 19 CSR 30-95.025(4)(C)4

Anonymous Scoring: A critical aspect of the scoring is that all responses are to be scored anonymously. By Rule, applications will be scored "without reference to identities of the facilities or of the individuals named in the application."⁴ To accomplish this, an applicant's redacted answers must not refer to facility business names, either legal or fictitious, and must refer to individuals by title and initials only, e.g. "Owner A.E.M" or "Principal Officer R.W.M."⁵ Also, any attachments to evaluation criteria question responses shall be redacted so as to obscure the facility business names and the names, addresses, and Social Security numbers of any individuals mentioned in the application. If a response or attachment identifies the facility business name or individual applicant, the response will be given a "0" or Unsatisfactory.⁶

Failure to respond completely: If an applicant fails to submit an attachment when a question requires one for a response, the score will be Unsatisfactory or a "0". This is because such a response "fails to meet minimum expectations" of the answer in the Evaluation Criteria Scoring Table. Likewise, an answer that is not responsive to the question or is blank should be scored a "0" or Unsatisfactory since it "fails to meet minimum expectations" of the answer in the Evaluation Criteria Scoring Table.

Conflict of interest: No individual may be involved in scoring applications if they have an interest in any facility applying for a facility license in Missouri. If a previously unknown conflict becomes known, it must be reported immediately to the project manager. This requirement is further defined in the contract between the scoring vendor and the department.

Contact from applicant or their representatives: Any contact between a scorer and an applicant is strictly prohibited. If an applicant or their representative attempts to contact a scorer or offers anything of value, such contact or attempted contact must be reported immediately to the project manager.

Confidentiality: Scorers shall keep all information related to the scoring of medical marijuana facility license applications in strict confidence and shall not divulge such information, in whole or in part, in any manner or form, to anyone, or allow others access to such information, unless specifically authorized to do so by the Project Manager. If a scorer has reason to believe that the confidentiality of information has been breached, the scorer must immediately notify the project manager.

⁴ 19 CSR 30-95.025(4)(C)2.B

⁵ Per a recent FAQ, all individual names, regardless if they are owners, officers, or an author of a letter of reference, must be either redacted or referred to by initials. Facility applicant business names must be redacted, but non-applicant business names or previous business names of an applicant do not need to be redacted.

⁶ 19 CSR 30-95.025(4)(C)2.C