

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920**

In the Matter of:	:	
	:	
	:	
Rhode Island Care Concepts, Inc.,	:	DBR No.: 21OCR016
	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why Determination of Application Disqualification and Ineligibility Should not be Affirmed, Notice of Hearing, and Appointment of Hearing Officer (“Order to Show Cause”) issued by the Department of Business Regulation (“Department”) to Rhode Island Care Concepts, Inc. (“Respondent”) on November 29, 2021. The parties agreed that this matter could be decided on an agreed statement of facts and exhibits, and briefs. The parties were represented by counsel and briefs were timely filed by March 11, 2022. Oral argument was held on April 5, 2022.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, 230-RICR-80-05-1 *Medical Marijuana*, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Respondent’s application for a medical marijuana compassion center filed pursuant R.I. Gen. Laws § 21-28.6-1 *et seq.* should have been disqualified by the Department.

IV. MATERIAL FACTS

The parties filed an agreed stipulation of facts (“ASOF”)¹ and exhibits as follows:

1. Pursuant to § 21-28.6-12(c) of The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws § 21-28.6-1 *et seq.* (“Act”) and § 1.2 of the *Rules and Regulations Related to the Medical Marijuana Program Administered by the Office of Cannabis Regulation at the Department of Business Regulation 230-RICR-80-05-1* (“Regulations”), the Department established a five-month application period from July 17, 2020, through 3:00 p.m. on December 15, 2020 (“Application Period”) for the submission of applications for six new compassion center licenses in six geographic zones to be selected through a qualification and random lottery selection process.
2. On July 17, 2020, the Department posted on its website a notice announcing the opening of the Application Period along with the Department’s prescribed Application form, which states in Part 1 “SECTION A: Application Period”:

The period for submission of applications will be from 10:00 a.m. on July 17, 2020, through 3:00 p.m. on December 15, 2020 (“Application Submission Deadline”). Updates regarding the application period will be posted on the Department’s website: <https://dbr.ri.gov/>.

If you would like to be added to the interested parties list for the Compassion Center Application process, please email DBR.MMPCCompliance@dbr.ri.gov, with a subject line “New Compassion Center Application Interested Parties List.”

It is Applicant’s responsibility to ensure that its application is complete and submitted before the close of the Application Submission Deadline. Incomplete applications will be deficient and will not be accepted for review and evaluation, and the application fee will not be refunded. The Department will not accept or consider applications tendered after the Application Submission Deadline.

3. The Department’s prescribed Application form, in Part 1 “SECTION B: General Instructions,” states:

Read this Application carefully. Answer each question completely. Do not leave blank spaces.

- **All application materials that require a signature must be signed by an “authorized signatory” of Applicant. An “authorized signatory” means a person that is authorized by the corporation/company to attest to the accuracy of all application information, materials and content submitted to the Department of Business Regulation.**

¹ See pre-hearing stipulation filed on March 7, 2022.

- If a question does not apply, write “N/A.” If the correct answer to a particular question is “None” write “None.”
 - All Forms, Annexes, Exhibits, Documents and Deliverables on the Checklist are mandatory and must be submitted **at the time of filing this Application** in order for your Application to be complete and eligible for review.
 - Applicant is under **a continuing duty to promptly notify** the Department of Business Regulation if there is a change in the information provided to the Department.
 - All entries on the Application Forms, Annexes, Exhibits, Documents and Deliverables should be single spaced and typed in 12-point Calibri or Times New Roman font.
 - Do not misstate or omit any material fact(s).
 - The submittal of an Application constitutes acceptance of the requirements, administrative stipulations, and all of the terms and conditions of this Application. All costs and expenses incurred in submitting an Application will be borne by Applicant.
 - **Definitions:** Please refer to the “Definitions” set forth in R.I. Gen. Laws § 21-28.6-3 and the “Definitions” in the Regulations, § 1.1.1, which are applicable to all compassion center license applications.
4. The Department’s prescribed Application form, in Part 1 “SECTION D: Application Requirements and Procedures,” states in relevant part:

Review and Evaluation Criteria

The Department of Business Regulation shall review and evaluate the submitted Applications based upon the criteria set forth in R.I. Gen. Laws § 21-28.6-12(c)(3) and § 1.2 of the Regulations. All Applicants that are deemed “qualified” by the Department shall be eligible for selection.

Denial or Disqualification of Application

The Department of Business Regulation may disqualify or deny any Application or decline to issue a license under any of the following circumstances:

- Applicant fails to submit a complete Application, hard copies, and electronic copies including all Forms, Annexes, Exhibits, Documents and Deliverables set forth on the Checklist in Part 2 and the copies with required redactions set forth in Part 3 of this Application.
- The Application contains a material misstatement, omission, misrepresentation, or untruth.
- Applicant fails to submit the Application by the Application Submission Deadline.
- Applicant fails to pay the \$10,000 Application fee prior to the Application Submission Deadline.
- The payment of taxes due in any jurisdiction is in arrears.
- Applicant fails to demonstrate to the Department’s satisfaction that it adequately meets the qualifications and requirements outlined in this

- application, the Act, and the Regulations.
 - Applicant fails to pay the \$500,000 license fee pursuant to R.I. Gen. Laws § 21-28.6-12(c)(5)(ii)(A).
 - Applicant fails to implement policies, procedures or actions indicated in its Application.
5. “Part 5 – Compassion Center Application Required Exhibits” of the Department’s prescribed Application form includes the following required “CC Exhibit F – Premises Requirements” in relevant part:

CC Exhibit F – Compassion Center Premises Requirements

Attach hereto as CC Exhibit F, per § 1.2(C)(4)(f) of the Regulations, is all the information responsive to paragraphs (i) through (vi) below.

Is the applicant proposing **alternative locations** in the same zone under this application?

Yes No

If “Yes”, then Application must provide a complete response to paragraphs (i) through (vi) below for each proposed location.

Applicant’s response must demonstrate its understanding of, and ability to comply with, the requirements under the Act and the Regulations and include without limitation:

- i. A description of the proposed Licensed Premises, including street address, plat/lot number and zoning district.
- ii. Evidence of compliance for the location(s) with the local zoning laws in the form of a certificate or letter from an authorized zoning official;
- iii. Evidence that the physical location is not located within one thousand feet (1,000’) of the property line of a preexisting public or private school in compliance with R.I. Gen. Laws § 21-28.6-12(f)(2) as demonstrated by a GIS Map or other similar municipal map showing Applicant’s property, and the 1,000 foot distance from the property line of any schools;
- iv. A draft diagram, shown to scale, no smaller than 8.5” by 11” and no larger than 11" X 17", of the proposed facilities showing:
 - (1) Where medical marijuana will be stored, processed, packaged, manufactured and dispensed;
 - (2) The restricted-access areas, limited-access areas, walls, partitions, entrances, exits and location of security alarms, cameras, and surveillance recording equipment locations;
 - (3) Patient access areas including areas designated for patient enrollment, waiting, and education;

- (4) Any public transportation services nearby,
 - (5) A diagram of all proposed on-site and off-site parking capacity (including spaces for persons with disabilities);
 - (6) How the facility will provide ADA-compliant access for persons with disabilities; and
 - (7) The location of the facility relative to streets and other public areas, and any other relevant information.
- v. A description of objective parameters (such as distances from streets and public areas) and/or proposed measures (such as black-out window shades) that ensure that marijuana at the premises shall not be visible from the street or other public areas; and
- vi. Documents evidencing either ownership of property or lease agreement with owner of property to allow the operation of a compassion center on the property, if property has already been purchased or leased at the time of the application or a signed letter of intent for such a sale or lease.

Exhibit F Signature page

[ATTACH AND SIGN BELOW]

Click here to enter a date.

Signature of Authorized Signatory

Date

Printed Name
Print Title:
Print Name of Applicant/Licensee:

- 6. Respondent submitted its medical marijuana compassion center application signed and dated December 1, 2020 by David L. Johnston, Respondent’s President (“Application”) to the Department before the Application Period deadline.
- 7. The Application’s *CC Exhibit F* contained a City of East Providence (“East Providence”) letter dated December 11, 2020 and entitled “*Zoning Certificate*,” which stated that the Respondent’s proposed medical marijuana compassion center at 15 Circle St., East Providence, RI (Assessor’s Plat 402, Block 04, Parcel 004.00) (“Proposed Site”) was in a Commercial 2 District and the Respondent had filed an application for a Use Variance for the prohibited land use of a compassion center.
- 8. By letter dated April 30, 2021, based upon the Department’s review in accordance with R.I. Gen. Laws §§ 21-28.6-12, 42-35-1 *et seq.*, and the Regulations, the Department communicated that the Application was conditionally qualified and eligible for selection in accordance with § 1.2(E) of the Regulations.

9. On August 19, 2021, the East Providence Zoning Board of Review (“Review Board”) held a special hearing on the Applicant’s Use Variance “to permit introduction of a Medical Marijuana Compassion Center, which is not expressly identified within the Zoning Ordinance’s – Schedule of Uses, Section 19-98, and therefore prohibited pursuant to Section 19-98(a).” The Review Board voted five to zero to deny the Applicant’s Use Variance, which was also reflected in its *Decision*, recorded September 24, 2021 (“Decision”).
10. On October 7, 2021, the Respondent filed a *Complaint* in Providence Superior Court, Civil Action No. PC-2021-06331, appealing the Review Board’s Decision.
11. On October 25, 2021, the Respondent notified the Department of the Review Board’s denial of the Use Variance and the Respondent’s filing of PC-2021-06331.
12. On or about November 1, 2021, the Department again reviewed the Application in accordance with the Act including R.I. Gen. Laws § 21-28.6-12 and § 1.2 of the Regulations and determined that the Application was deficient, not qualified and ineligible for selection in accordance with § 1.2(D) and (E) of the Regulations. By letter dated November 17, 2021, the Department communicated its determination of said deficiency, ineligibility and disqualification, and notice of its appellate rights pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* and the Department’s *Rules of Procedure for Administrative Hearings* 230-RICR-100-00-2.
13. On November 22, 2021, the Department received a request for an administrative hearing from Respondent.
14. The *Medical Marijuana Program Compassion Center Application Questions Asked by Interested Parties* document, posted on the Department’s website on August 12, 2020, states in relevant part:

5. If a town requires a Special Use Permit, is this required in order to apply and be qualified by the DBR? The application mentions being able to operate in 9 months. Please clarify how a SUP requirement by a town affects an application.

If a final zoning approval/certificate is not available upon submission of an application, the applicant must include in its application a letter from an authorized zoning official confirming that a complete zoning application has been received by and is under review by the city/town along with the projected timeline for final decision. Thereafter, if the applicant is selected for licensure in the random lottery, the applicant will have nine (9) months from the date of selection to complete all pre-requisites for issuance of the compassion center license, including providing the Department with confirmation that the city/town has issued a final special use permit or other applicable zoning approval. ... [Emphasis in original.]

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are

more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes and Regulation

As stated above, R.I. Gen. Laws § 21-28.6-12(c) and the Regulations provide for the licensing of compassion centers. R.I. Gen. Laws § 21-28.6-3(6)(i) defines a compassion center as follows:

(6)(i) "Compassion center" means a not-for-profit corporation, subject to the provisions of chapter 6 of title 7, and is licensed under § 21-28.6-12, that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, or dispenses medical marijuana, and/or related supplies and educational materials, to patient cardholders and/or their registered caregiver cardholder or authorized purchaser.

R.I. Gen. Laws § 21-28.6-12(c) provides in part as follows:

Compassion center and agent applications and license: (1) Each application for a compassion center shall be submitted in accordance with regulations promulgated by the department of business regulation and shall include, but not be limited to:

(iii) The proposed physical address of the compassion center, if a precise address has been determined, or, if not, the general location where it would be located. This may include a second location for the cultivation of medical marijuana.

More specifically, §1.2 of the Regulations provides as follows:

1.2 Compassion Center Application, Licensing and Renewals

A. R.I. Gen. Laws § 21-28.6-12(c) authorizes DBR to promulgate regulations regarding compassion center applications and licensure.

C. Application for Compassion Center License

3. DBR will evaluate applications based upon the information provided by applicants on the application forms/submissions and otherwise obtained during the application process.

4. Each application for a compassion center shall be on such forms and through such submission mechanisms as designated by DBR and shall include, but not be limited to the following:

f. The proposed physical location of the compassion center by plat and lot number, street address and zoning district. This may also include one additional location proposed to be used for the secure cultivation of medical marijuana subject to § 1.6.4(A) of this Part. Regarding the proposed physical location(s), the applicant shall submit:

(1) Evidence of compliance for the location(s) with the local zoning laws in the form of a certificate or letter from an authorized zoning official.

(2) Evidence that the physical location is not located within one thousand feet (1,000') of the property line of a preexisting public or private school in compliance with R.I. Gen. Laws § 21-28.6-12(f)(2). For the purposes of this paragraph, "private school" shall be deemed to refer to any nonpublic institution of elementary or secondary (K-12th Grade) education, accredited or recognized as a private school by the department of elementary and secondary education or the school committee of the city or town having jurisdiction over private schools. For purposes of this paragraph, the 1000-foot distance shall be measured from the secured compassion center premises, which shall include allotted outdoor areas (such as parking and loading areas), to the property line of the school, which shall include the school building, land, and appurtenances.

(3) A draft diagram of the proposed facilities, including where within the facility the medical marijuana will be stored, processed, packaged, manufactured and dispensed, and where security alarms and cameras and surveillance recording storage will be located, patient access areas, limited access areas, patient parking capacity and access for persons with disabilities in accordance with applicable law, and showing the location of the facility relative to streets and other public areas.

(4) A description of objective parameters (such as distances from streets and public areas) and/or proposed measures (such as black-out window shades) that ensure that marijuana at the premises shall not be visible from the street or other public areas.

(5) Documents evidencing either ownership of property or lease agreement with owner of property to allow the operation of a compassion center on the property, if property has already been purchased or leased at the time of the application or a signed letter of intent for such a sale or lease.

5. Only applications which DBR has determined to be complete (i.e., which satisfy all applicable application requirements including but not

limited to those above) shall be eligible and accepted for further evaluation and review. Incomplete applications will be deficient and will not be considered further and the application fee will not be refunded.

D. Compassion Center Application Review Criteria

1. The Department shall review complete applications and information otherwise obtained during the application process utilizing the criteria specified in R.I. Gen. Laws § 21-28.6-12(c)(3) of the Act and § 1.2 of this Part in order to determine whether an application is qualified.

2. If an applicant seeking a license to operate a compassion center is notified that its application has been deemed “qualified” by DBR, it shall be eligible for selection in accordance with § 1.2(E) of this Part.

3. In determining whether an applicant is “qualified,” DBR shall determine whether such information adequately demonstrates an ability of the applicant to satisfy licensing requirements and compliance with the Act and program regulations.

E. Application Selection Process

1. Once DBR completes its review of all applications, DBR will notify all qualified applicants and publicly announce the date, time, and manner of randomly selecting qualified applicants for approval in each available zone.

F. Prerequisites to Issuance of Compassion Center License and Commencement of Operations

1. Upon notification by DBR, the approved applicant must take reasonable and documented efforts to complete the prerequisites for issuance of the license. If satisfaction of all requirements for licensure takes longer than nine (9) months, the approved applicant must show good cause to DBR why additional time should be granted and the application approval should not be rescinded.

2. Once the license has been issued by DBR, the compassion center must take reasonable and documented efforts to launch compassion center activities, which for purposes of this paragraph shall mean actual acquisition and dispensing of medical marijuana pursuant to the Act. If commencement of such activities takes longer than three (3) months, the compassion center must show good cause to DBR why the license should not be revoked for non-use.

D. Arguments

The Department argued that once East Providence denied the Respondent’s zoning variance request, the Respondent’s application became deficient since it could no longer demonstrate compliance with § 1.2(C)(4)(f)(1) of the Regulations.² It argued that complete

² The references to sections within this Decision will refer to various sections of the Regulations.

applications are prerequisite for eligibility under § 1.2(C)(5) and because the Application became incomplete during the application process, it became ineligible for the lottery. The Department argued that applications in other zones are irrelevant but there had been no final zoning decision in those matters prior to those applicants participating in the lottery. It argued that the Regulations are clear that any information gathered during the application process can influence the Department's decision regarding an application.

The Respondent argued that it timely filed an Application that was in compliance with the Application requirements. It argued that its Application was conditionally accepted and that the Regulations do not address what are the bases for a conditional acceptance. It argued that the Regulations do not provide for post-application rejection and disqualification. It argued that if it had not received the zoning denial prior to the lottery, it would have been able to participate in the lottery and then if selected in the lottery, it would have had nine (9) months to obtain zoning permission. The Respondent argued that it was treated differently from other applicants in that other applicants were allowed to participate in other zone lotteries without having filed applications for zoning in their municipalities. It argued that it appealed the zoning denial from East Providence so there has not been a final decision.

E. Whether Respondent's Application Should be Disqualified

a. The Application Process

A requirement of being licensed as a compassion center is that the center has a physical location which complies with the zoning of the town/city where it is located. Indeed, a compassion center could not fulfill its licensed functions without a physical location. R.I. Gen. Laws § 21-28.6-3(6)(i) and R.I. Gen. Laws § 21-28.6-12(c). Pursuant to R.I. Gen. Laws § 21-

28.6-12(c)(3), the Department was authorized to issue regulations for the licensing of compassion centers, and those requirements can be found in § 1.2 of the Regulations.

The Respondent does not have a proposed physical location that complies with zoning. A proposed physical location that complies with zoning is required in order to obtain a compassion center license. Section 1.2(C)(4)(f)(1) of the Regulations requires an applicant provide a physical location with evidence of compliance with zoning. Other requirements regarding the physical location include that the location not be within 1000 feet of a public or private school and proof that the applicant either owns or has a lease agreement with the proposed location and that a draft diagram of the proposed facilities be submitted.

Section 1.2(C)(5) of the Regulations provides that only applications that the Department determines are complete – “satisfy all applicable application requirements” - shall be eligible and accepted for further evaluation and review. As agreed by the parties, the Respondent’s initial application was complete as it had a proposed location that had not been denied zoning permission. However, prior to the lottery, the local town denied the Respondent’s requested special use permit for the proposed location. Thus, the Application was no longer complete as the Respondent no longer had a proposed location that could be used. Without a location, the Respondent cannot operate as a compassion center.

The Respondent argued that there are no provisions in the Regulations for post application rejection and disqualification. However, the application review process is not a static process that only applies to a certain date in time. Indeed, applicants were directed by the Department to update the Department if any information in their applications changed. As provided for in § 1.2(C)(3), the Department “will evaluate applications based upon information provided by applicants on the application forms/submissions and otherwise obtained during the

application process.” As provided for in § 1.2(D), the Department reviews complete applications. When the Department notified the Respondent by letter dated April 30, 2021 that its Application was qualified for the lottery, the Application was complete. However, said letter indicated that the Respondent had a continuing obligation to promptly notify the Department of any change in information contained in the Application. Exhibit Two (2).

When East Providence denied the Respondent’s zoning use request, the Application was no longer was complete. The Respondent no longer had a proposed physical location (no alternative site was provided in the Application). Once the Respondent updated the information with the Department, the Department was able to review this information and take action on the now incomplete Application. As provided for in § 1.2(D)(3), the Department in determining whether an applicant is qualified reviews whether the information adequately demonstrates an ability of the application to satisfy licensing requirements. Without a physical location, the Department found that the Application was deficient and not qualified and notified the Respondent. The Application had previously been conditionally qualified. It was deemed not qualified when new information was provided the Department.

To find that an agency could not change a decision based on new information received after the receipt of an application would render an application review process meaningless. The Regulations provide that the Department reviews applications during the application process. That process did not stop once the Respondent was conditionally qualified. Otherwise, an applicant could run into numerous issues³ after the conditional qualification, and the Department would have no authority to disqualify the application. That is not what is required by nor envisioned in the Regulations’ review process of applications.

³ E.g. proof of misleading or fraudulent statements in the application, change in financial situation, change in ownership, etc.

Thus, while the Application was not deficient on April 30, 2021, the Application process was ongoing and that did not preclude the Application becoming deficient upon the denial of the zoning use request. That denial was new information regarding the Applicant's proposed physical location so that it became part of the Department's ongoing review and evaluation.⁴ Once the Respondent's proposed location was denied zoning permission, its Application became incomplete, deficient, and ineligible as it was no longer able to comply with a condition of licensing: having a physical location.

b. The Lottery and the Nine Months

The Respondent argued that the Regulations do not provide for post application disqualification and in fact, an applicant who has applied for a special use permit and participates and is chosen in the lottery is allowed nine (9) months to secure a zoning permit. As discussed above, the Regulations provide for an ongoing evaluation of applications. The process is not static and dependent on an one (1) day in time review of applications.

The nine (9) month period referenced in the Department's instructions is from § 1.2(F)(1) which applies to an approved applicant needing to take reasonable and documented efforts to complete the application process, and if that process takes longer than nine (9) months, the approved applicant must show good faith cause why additional time should be granted. Thus, if an applicant is chosen in the lottery, it must comply with all requirements within nine (9) months unless good cause is shown.

This is not a nine (9) month period just to cure zoning issues. It is for the applicant to ensure that it is compliant with all licensing requirements so that the license may be issued.

⁴ The Respondent argued that it appealed the zoning denial to Superior Court so there was no final decision on its zoning request. However, § 1.2(B)(4)(f) requires evidence of zoning compliance from an authorized zoning official. With the denial of the Respondent's use variance request, it could not submit such a document with its Application. As such, the Application is incomplete.

After the license is issued, the applicant/licensee has three (3) months to launch – in other words to open - as a compassion center unless good cause is shown.

The Respondent argued that its disqualification is inconsistent with this rule. It argued that if there had been no zoning denial prior to the lottery, it would have been able to participate in the lottery. However, as the Respondent received a denial prior to the lottery, its application became incomplete and deficient.⁵

c. Other Applicants

The Respondent raised the issue of applicants in other zones that have succeeded in the lottery but that the Respondent believes have not complied with zoning requirements. The Department denied that it had treated applicants differently. The Respondent's Application was for zone six (6). The Department represented at oral arguments that zone six (6) is the only zone not to go through the lottery process. The Respondent argued that two (2) other winners in two (2) other zones have not pursued their special use zoning applications. The Respondent indicated that the other two (2) mentioned applicants took the first steps toward obtaining special use permits in their localities but have not pursued those applications. The Department represented that neither of those applicants had received a final decision on zoning at the time of their lotteries. It is unclear what the status of each zoning application was at the time those other zone lotteries were held. However, no evidence was shown that either of those other applicants received a denial from their local authority for a special use zoning permit prior to their lotteries. Nonetheless, what other applicants were doing with their zoning applications does not change the fact that the Respondent's Application became incomplete

⁵ The Department could have chosen to require zoning permission prior to the granting of any conditional approval for the lottery. Instead, it allowed those applicants in the midst of trying to secure zoning permission to apply and be conditionally approved, but once that approval was not forthcoming, an application cannot be considered complete.

once it longer had a possible physical location required by the Regulations. The other applications are not relevant to this issue.

VI. FINDINGS OF FACT

1. On November 29, 2021, the Order to Show Cause was issued to the Respondent by the Department.

2. The parties agreed to have the matter decided on agreed facts and exhibits, and briefs. Briefs were timely filed by March 11, 2022, and oral arguments were held on April 5, 2022.

3. The facts contained in Section IV and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, the Regulations, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings*.

2. As of August 19, 2021, the date of the Review Board's decision to deny the Respondent's use variance (reduced to writing on September 24, 2021), the Respondent no longer had a physical location as required by R.I. Gen. Laws § 21-28.6-1 *et seq.* and § 1.2(C)(4)(f) of the Regulations.

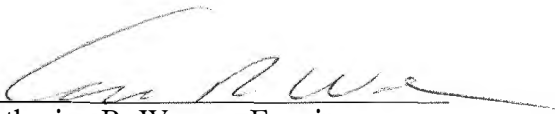
3. Pursuant to R.I. Gen. Laws § 21-28.6-1 *et seq.* and the Regulations, a licensed compassion center requires a physical location

VIII. RECOMMENDATION

Pursuant to R.I. Gen. Laws § 21-28.6-1 *et seq.* and the Regulations, the Respondent's Application was conditionally approved but became incomplete, deficient, and ineligible for

the lottery once the Respondent was denied zoning permission since it no longer met a licensing requirement to have a physical location. Therefore, the Department correctly found that the Application was incomplete, deficient, and ineligible since it no longer could meet conditions of licensing so that the Respondent was properly disqualified from the lottery.

Dated: April 19, 2022

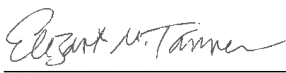

Catherine R. Warren, Esquire
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

 X ADOPT
 REJECT
 MODIFY

Dated: 04/21/2022


Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 21st day of April, 2022, that a copy of the within decision was sent by first class mail, postage prepaid and by electronic delivery to Robert Clark Corrente, Esquire, Whelan Corrente & Flanders, LLP, 100 Westminster Street, Suite 710, Providence, R.I. 02903 and by electronic delivery to Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

Diane L. Paravisini
