



State of New Jersey
CANNABIS REGULATORY COMMISSION

PHILLIP D. MURPHY
Governor

P.O. BOX 216
TRENTON, N.J. 08625-0216

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January 13, 2022

VIA ELECTRONIC MAIL to: slederman@riker.com

Stuart Lederman
Bloom Medicinals of PA, LLC
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962

Re: FINAL AGENCY DECISION – (S-0010)
Denial of Permit to Operate an Alternative Treatment Center (“ATC”) Pursuant to the 2018 Request for Application (“RFA”) Process

Dear Mr. Lederman:

The New Jersey Cannabis Regulatory Commission (“Commission”) has received and reviewed the supplemental materials, submitted on May 14, 2021, regarding your application to operate an Alternative Treatment Center (“ATC”) pursuant to N.J.S.A. 24:6I-1 *et seq.* For the reasons stated below, the CRC has denied your application for a vertically integrated permit endorsement.

During the review period of this matter, Bloom Medicinals of PA, LLC (“Bloom”) accepted a cultivation award pursuant to the 2019 RFA Process. Bloom accepted its cultivation award in writing on October 22, 2021. Pursuant to the terms of the 2019 RFA, and as explained in a letter to Bloom from the Commission on October 21, 2021, Bloom’s acceptance of the cultivation permit endorsement disqualifies Bloom from being awarded any other permit issued under either the 2019 RFA and the 2018 RFA.

It has always been the Commission’s intention, as provided for in the RFAs, to limit applicants to one permit endorsement through the RFA processes (unless applying for a vertically integrated award, in which case three endorsements are available – one for cultivation, one for manufacturing, and one for dispensing). The reason for limiting awards to one per applicant is to ensure that patient need is being met through a diverse and robust market so that potential failures in supply chains of the industry will not disrupt the entire industry.

The language of both RFAs specifically states that any holder of a permit is not eligible for award of an additional permit. 2018 RFA, Section VII, Criteria and Weighting: “Any entity currently holding a permit issued by the Department to dispense medicinal marijuana, including affiliates, is not eligible to participate in this RFA. Individuals and entities with a 25% stake (in the form of debt, equity, or other

financial relationship) in any of the currently permitted ATCs, or entities responsible for the management of currently permitted ATCs are also ineligible to apply.” 2019 RFA, Section III, Eligibility:

“... applicants cannot submit for both vertically integrated permits and individual endorsements. Applicants submitting for individual endorsements can submit applications for up to three endorsements, but they can’t be in the same region(s). No applicant shall be awarded more than one permit pursuant to this RFA, and no applicant shall hold more than 1 cultivation endorsement, 1 manufacturing endorsement, and 1 dispensary endorsement because of the awards made pursuant to this RFA.”

Furthermore, based on a full and thorough review of each application against the requirements set forth in the RFA, Bloom’s application is being denied on the merits.

By way of background, on July 16, 2018, the Department of Health (“Department”) posted a Request for Applications (“RFA”) to award up to six vertically integrated ATCs, with up to two awardees in each of the three New Jersey regions – North, Central, and South. Applications were due to the Department no later than August 31, 2018, at 5:00 PM. In response to the RFA, the Department received 146 timely applications submitted by 103 applicants, with several applicants submitting applications to operate ATCs in multiple regions. As explained in detail below, of the 146 applications, six successful applicants were selected. Specifically, two applications were selected for each of the three regions.

Following the issuance of the RFA, the Department held a mandatory pre-submission conference for applicants on August 9, 2018, with the purpose of explaining the scoring process. The Department also used this time to receive inquiries that would later be compiled, along with answers, in an official “Q & A” document that was made public less than one week later.

Pursuant to N.J.A.C. 8:64-6.2 (now N.J.A.C. 17:30A-6.2 and 6.4), the Department convened a selection committee in conjunction with the RFA. The selection committee was composed of a total of six individuals to review and score all applications. The review committee was comprised of four representatives from the Department, one individual from the Department of Agriculture, and one individual from the Department of Treasury. The review committee was configured to provide expertise across a wide range of relevant areas, including plant sciences, diversity and inclusion, as well as all regulatory aspects of the medicinal marijuana program. On September 5, 2018, before any scoring commenced, all review committee members attended a training, which included a discussion about the Program, guidance on scoring applications, and training on diversity and bias. The Department also provided the review committee members with additional printed scoring instructions for the sixty criteria they would be evaluating. For each criterion, the instructions directed members to award points on a scale from zero to a maximum number of points allowable, which varied.

Prior to beginning work on the selection committee, members completed a confidentiality agreement and a business disclosure form so the Department could verify that none of the selection committee members had any outside business interests that would conflict with their work on the committee. Once the completeness review concluded, selection committee members were provided a list of the applicants they would be scoring, including the names of principals, owners, and directors. Every selection committee member signed a certification stating they had no conflicts of interest with respect to the applicants.

Initially, the review committee was given sixty days from the application due date to complete their evaluations. Realizing during the initial review that this would be an insurmountable task, the review

committee requested additional time to complete their evaluations, and the Department granted an additional six weeks. On December 12, 2018, the review committee recommended six applications per region for “further consideration”. Five days later, the Department issued final agency decisions to all applicants, notifying them of either acceptance or rejection of their applications. At this time, the Department informed all applicants that it would not award more than one permit to any single applicant, citing its belief that choosing six different entities would benefit patients by providing a greater variety of product and ensuring that if one entity suffered a setback (for instance, crop failure) only one ATC would be affected.

Based upon the selection committee’s impartial and thorough review of the applications against the criteria set forth in the RFA, the following applicants initially received the highest scores in their designated regions:

NORTHERN REGION:

Control #	Name of Applicant	<u>Total Scores</u>
N-0036	NETA NJ LLC	932.1667
N-0032	GTI New Jersey LLC	927.3333
N-0034	Verano NJ LLC	920.8333
N-0005	PharmaCann New Jersey	895.3333
N-0014	Bloom Medicinals	894.8333
N-0010	Liberty Plant Sciences LLC	894.6667

CENTRAL REGION:

Control #	Name of Applicant	<u>Total Scores</u>
C-0047	MPX New Jersey	958.1667
C-0025	NETA NJ LLC	932.1667
C-0003	Columbia Care New Jersey LLC	929.0000
C-0022	GTI New Jersey LLC	927.3333
C-0023	Verano NJ LLC	920.6667
C-0043	JG New Jersey LLC	913.3333

SOUTHERN REGION:

Control #	Name of Applicant	<u>Total Scores</u>
S-0051	MPX New Jersey	958.1667
S-0034	NETA NJ LLC	932.1667
S-0004	Columbia Care New Jersey LLC	929.0000

S-0025	GTI New Jersey LLC	927.3333
S-0049	JG New Jersey LLC	913.3333
S-0026	Harvest of New Jersey LLC	911.1667

In making its selection determination from these high-scoring applications, the Department first concluded that choosing the same applicant in multiple regions would lead to an overly concentrated market, and with the size and strength of the applicant pool, was unnecessary in this RFA. Additionally, the Department determined that having a more diverse set of permittees across the State would be most beneficial to patients. Having more distinct permittees would lead to a greater variety of products for medical marijuana patients, and thus to greater access and choice. A more diverse set of permittees would also mitigate negative impacts if one fails. Accordingly, the Department determined that no one applicant should operate more than one ATC pursuant to this RFA. The Department then crafted a selection methodology that ensures an adequate supply of medical marijuana, which is a significant component of the purpose and intent of the Compassionate Use Medical Marijuana Act (Act), N.J.S.A. 24:6I-1. Specifically, the Department formulated a selection methodology utilizing existing medical marijuana supply and demand to determine the regional order in which the Department would make its selections.

In calculating supply and demand, the Department first used a medical marijuana demand factor for each region. The demand factor for each region was comprised of the following calculations: total population of the region divided by total statewide population (2017 American Community Survey 5-year estimates) and, utilizing the Department’s Medical Marijuana Patient Registry, the current medical marijuana patient population in the region divided by total statewide medical marijuana patient population. The two calculations were averaged to determine the demand factor. The Department calculated a medical marijuana supply factor using data extracted from the inventory management systems of the current ATCs. The supply factor was the total current medical marijuana supply of the region in ounces divided by total statewide supply in ounces. These factors were then divided to determine the ratio of supply and demand in each region, with lower numbers meaning demand was higher than supply and higher numbers meaning supply was keeping pace with demand.

Consistent with this analysis, the Department made its first two selections from the Northern region. In the Northern region, the Department selected NETA NJ, LLC and GTI New Jersey, LLC as they were the highest scoring applicants in the region. Next, the Department considered applicants for the Southern region. In making its selection for this region, the Department found that MPX New Jersey and NETA NJ, LLC received the highest scores. However, NETA’s application had already been selected for the Northern region. Because the Department determined that no one applicant should operate multiple ATCs under this RFA and NETA was already selected to move forward with the ATC permitting process in the Northern region, it was disqualified from selection in the Southern region under the Department’s selection methodology. As such, the Department selected the next highest scoring applicant for the Southern Region, which was Columbia Care New Jersey, LLC. Thus, Columbia Care New Jersey, LLC and MPX New Jersey were the selected applicants for the Southern region. In selecting the applicants for the Central Region, the top two scoring applicants for this region – MPX and NETA – were already selected for other regions in the State. Applying again the Department’s selection methodology that no one applicant should be selected for multiple regions, the Department disqualified both MPX and NETA from consideration for the Central region, as well as Columbia Care New Jersey, LLC and GTI New Jersey, LLC, as they had also been picked for other regions. As a result, the Department then proceeded to select the next two highest ranking applications, who were Verano NJ, LLC and JG New Jersey, LLC. Therefore, NETA NJ, LLC (North); GTI New Jersey, LLC (North); MPX New Jersey (South); Columbia

Care New Jersey, LLC (South); Verano NJ, LLC (Central); and JG New Jersey, LLC (Central) were selected by the Department to proceed with the ATC permitting process for their respective regions.

Following release of the 2018 Final Agency Decisions, several unsuccessful applicants appealed the Department's decisions. Motions for stays pending the appeals were submitted and denied at the Department level, Superior Court, and State Supreme Court. All appeals were consolidated in the Superior Court, and a decision was rendered on November 25, 2020, vacating the final agency decisions in question and remanding the matter back to the Department for further administrative proceedings. *See Matter of the Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343 (App. Div. 2020)*, ("Superior Ct. Op."). The Superior Ct. Op. required the Department to address concerns with the scoring system that, without further explanation, could be considered to have produced arbitrary results. The Court declined to direct specific actions by the Department, but rather provided the Department with broad authority to rectify the concerns raised by appellants with the scoring system and procedure.

Following the Court's decision, and pursuant to P.L.2019, c.153, "Jake Honig Compassionate Use Medical Cannabis Act", on April 12, 2021, the New Jersey Cannabis Regulatory Commission (the "Commission"), enacted Resolution 2021-2, with the Commission assuming regulatory oversight authority from the Department for all medical cannabis activities, including the 2018 RFA.

Following the Court's remand, the Commission took certain steps to review the scoring procedure and data pertaining to the 2018 RFA. This "quality control" process is outlined in the Appendix included with this letter. ("Remand Recommendation Report" at 16).

This process was led by individuals uniquely equipped to address the concerns raised by the Appellants and the Court. The "quality control" team was comprised of four individuals with the collective expertise and qualifications as follows:

- Over a decade of experience in healthcare policy, government affairs, communications, and healthcare advocacy
- Over a decade of experience in data analytics
- Over a decade establishing investigative guidelines and standardizing procedures for investigations on behalf of the State
- Over two decades of experience conducting licensing and suitability investigations of entities and individuals for professional licensure
- Over a decade of experience conducting financial source and investment investigations on behalf of State and private entities
- Over 60 years of experience conducting and supervising licensing investigations, as well as background and suitability investigations of corporate entities and individual applicants on behalf of various State agencies
- Experience designing process quality control data metrics and dashboards
- Experience providing data reporting and outcome analysis
- Hold professional degrees including, Masters of Business Administration with a concentration in Data Analytics and Masters in Public Administration

Assessment by the quality control team assigned to review the process, procedures, and scoring of the 2018 RFA affirmed that there existed no clear and convincing evidence that the selection committee

delivered any arbitrary or capricious scores, and that no scores needed to be amended as part of the review. The quality control findings are detailed in the Appendix included with this letter (“Remand Recommendation Report” starting at 17). Therefore, following the quality control review, the following final top scores are:

NORTHERN REGION:

Control #	Name of Applicant	<u>Total Scores</u>
N-0036	NETA NJ LLC	932.1667
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S-0025	GTI New Jersey LLC	927.3333
S-0049	JG New Jersey LLC	913.3333
S-0026	Harvest of New Jersey LLC	911.1667

On April 12, 2021, pursuant to the quality control process instituted by the Commission for the 2018 RFA, Bloom submitted supplemental information and raised specific concerns regarding the 2018 RFA scoring and methodology. Bloom submitted a single list of concerns addressing all three of its applications

– one for each region (North, N-0014; Central, C-0007; South, S-0010). Those concerns have been copied here:

1. Bloom’s application was plagued by “numerous [and] indisputable anomalies” 465 N.J. Super. at 362
2. Anomalies may be a result of inadequate training and supervision, or reviewers misunderstanding criteria provided by the Department
3. Bloom’s overall score was uniquely impacted by a single reviewer, Reviewer 3
4. Reviewer 3 gave a total of 625 out of 1,000 points. The average score of the remaining five reviewers was 948 – a difference of 323
5. Reviewer 3’s errant scoring was inconsistent with their review of comparable narrative responses from winning applicants
6. The Department’s use of averaging scores alone was not enough to ameliorate the gross divergence that resulted from the Department’s review and scoring
7. The CRC should remove or censor Reviewer 3 as being an obvious outlier
 - a. Censoring data is the most commonly recognized method of dealing with datasets that contain large differences, and provides the most efficient and equitable means for curbing the impact of this outlier on Bloom’s overall score – by censoring Reviewer 3, Bloom would have posted a score of 948.8
 - b. Also references using the median approach to limit the impact of the outlier score, or the truncated/trimmed mean approach, to mitigate the bias caused by Reviewer 3’s scoring
8. The inconsistent and arbitrarily low scores from Reviewer 3 came across almost all categories
9. Bloom scored near-perfect in most categories, but for Reviewer 3 who provided unwarranted low scores to Bloom’s responsive submissions
10. The high degree of relative error present in the Department’s scoring across individual categories evidences the arbitrary and unreliable nature of the scoring
11. 1-1a (25 points for Operating a regulated medicinal marijuana business) received scores of 25, 25, 10, 25, 25, 25
 - a. Relative error of 60%
 - b. Bloom and the winning applicants demonstrated materially equivalent business experience, yet the winners received scores of 149 out of 150 compared to Bloom’s 135
12. 1-1c (25 points for Three aspects of supply chain) received scores of 25, 25, 12, 25, 25, 25
 - a. Relative error of 52%
 - b. NETA received the exact same score as Bloom despite demonstrating far less experience than Bloom (not in multiple markets, limited dispensary experience)
13. 1-1d (25 points for Qualifications of board members, owners, etc.) received scores of 25, 25, 8, 24, 25 and 25
 - a. Relative error of 68%
 - b. 17 point differential from the average score awarded by 5 reviewers to the score of Reviewer 3
14. 1-2.2 (25 points for Mobilization plan) received scores of 25, 25, 10, 23, 25, and 25
 - a. Relative error of 60%
 - b. 15 point differential from the average score awarded by 5 reviewers to the score of Reviewer 3
15. Similar complaints were raised regarding sections 1-4.1c, 1-4.1d, 1-4.1g, 1-4.1h, 1-4.1i, 1-4.3b, 1-5c, 1-6a, 1-6b, 1-6c, 1-7, 2-1a, 2-1b, 2-3a and 2-3b
16. Zero scores related to MBE and WBE were contrary to the Department’s scoring instructions and unwarranted considering Bloom’s responsive submission

17. Zero scores related to financials were contrary to the Department’s scoring instructions and unwarranted considering Bloom’s responsive submission

The Commission addresses the concerns raised as follows:

1. Please refer to the “Remand Recommendation Report” for an explanation of various “anomalies”.
2. Please refer to the “Remand Recommendation Report” beginning at 10.
3. Please refer to the “Remand Recommendation Report” beginning at 23.
4. Please refer to the “Remand Recommendation Report” beginning at 23.
5. Please refer to the “Remand Recommendation Report” beginning at 23.
6. Please refer to the “Remand Recommendation Report” beginning at 23.
7. Please refer to the “Remand Recommendation Report” beginning at 13 and at 23.
8. Please refer to the “Remand Recommendation Report” beginning at 23.
9. Please refer to the “Remand Recommendation Report” beginning at 27.
10. Please refer to the “Remand Recommendation Report” beginning at 27.
11. 11a/b. Please refer to the “Remand Recommendation Report” beginning at 27.
12. 12a/b. Please refer to the “Remand Recommendation Report” beginning at 27.
13. 13a/b. Please refer to the “Remand Recommendation Report” beginning at 27.
14. 14a/b. Please refer to the “Remand Recommendation Report” beginning at 27.
15. Please refer to the “Remand Recommendation Report” beginning at 27.
16. Please refer to the “Remand Recommendation Report” beginning at 30.
17. Please refer to the “Remand Recommendation Report” beginning at 20 and again at 27.

Based on a full and thorough review of each application against the requirements set forth in the RFA, the composite scores enumerated by the Commission, the selection methodology detailed above, and in accordance with the purposes of N.J.S.A. 24:6I-1 et al. and P.L.2009, c.307 and the regulations promulgated thereunder, the Commission hereby **DENIES** the following application:

Applicant: Bloom Medicinals of PA, LLC
Region: South
Score: 894.8333333333333337

To reiterate, Bloom Medicinals of PA, LLC has accepted an award pursuant to the 2019 RFA, making it ineligible to receive an additional award under the 2018 RFA. The language of both the 2018 RFA and the 2019 RFA specifically state that any holder of a permit is not eligible for award of an additional permit. 2018 RFA, Section VII, Criteria and Weighting: “Any entity currently holding a permit issued by the Department to dispense medicinal marijuana, including affiliates, is not eligible to participate in this RFA. Individuals and entities with a 25% state (in the form of debt, equity, or other financial relationship) in any of the currently permitted ATCs, or entities responsible for the management of currently permitted ATCs are also ineligible to apply.” 2019 RFA, Section III, Eligibility: “... applicants cannot submit for both vertically integrated permits and individual endorsements. Applicants submitting for individual endorsements can submit applications for up to three endorsements, but they can’t be in the same region(s). No applicant shall be awarded more than one permit pursuant to this RFA, and no applicant shall hold more than 1 cultivation endorsement, 1 manufacturing endorsement, and 1 dispensary endorsement because of the awards made pursuant to this RFA.”

The quality control team reviewed, considered, and categorized each of the questions and concerns raised by the appellant. While all concerns may not be specifically addressed in this Final Agency Decision, the CRC has responded to every category of grievance received. *See* Remand Recommendation Report, pp. 33-35.

You have the right to appeal the Commission's decision to the Superior Court of New Jersey, Appellate Division, by February 28, 2022, (45 days from the date of this letter) in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
P.O. Box 006
Trenton, New Jersey 08625

Because your application was not successful, the check(s) valuing \$18,000 that was submitted with your application has been destroyed. Thank you for your interest in operating an ATC.

Sincerely,

A handwritten signature in black ink, appearing to be 'DH' with a long horizontal line extending to the right.

Dianna Houenou
Chairperson
New Jersey Cannabis Regulatory Commission