



365 RIFLE CAMP ROAD
WOODLAND PARK, NEW JERSEY 07424
973-247-9000
973-247-9199 (FAX)

1500 LAWRENCE AVENUE
CN7807
OCEAN, NEW JERSEY 07712
732-922-1000
732-922-6161 (FAX)

214 CARNEGIE CENTER
SUITE 112
PRINCETON, NEW JERSEY 08540
609-751-5551

140 GRAND STREET
SUITE 705
WHITEPLAINS, NEW YORK 10601
800-569-3886

41 UNIVERSITY DRIVE
SUITE 400
NEWTOWN, PENNSYLVANIA 18940
267-757-8792

www.ansellgrimm.com

RICHARD B. ANSELL †
PETER S. FALVO, JR.
JAMES G. AARON
PETER B. GRIMM
MITCHELL J. ANSELL
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MICHAEL V. BENEDETTO
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RICK BRODSKY •
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RAHOOL PATEL •
NICOLE D. MILLER †
ALFRED M. CASO
ANTHONY J. D'ARTIGLIO •

COUNSEL
HON. ANTHONY J. MELLACI, JR., J.S.C. (RET)
STACEY R. PATTERSON •
JAMES A. SYLVESTER
HON. RAYMOND A. HAYSER, J.T.C. (RET)
ROY W. HIBBERD • †
LISA GOLDWASSER •

RETIRED
DAVID K. ANSELL †
ROBERT I. ANSELL

IN MEMORIAM
LEON ANSEHELEWITZ (1929-1986)
MAX M. BARR (1929-1993)
MILTON M. ABRAMOFF (1935-2004)

LICENSED ALSO IN:
D.C. • MASS. • N.Y. • WASH.
• PENN. • FLA. • CALIF.

† FELLOW, AMERICAN
ACADEMY OF MATRIMONIAL
LAWYERS

‡ CERTIFIED BY THE SUPREME
COURT OF NEW JERSEY AS A
CIVIL TRIAL ATTORNEY

§ CERTIFIED BY THE SUPREME
COURT OF NEW JERSEY AS A
CRIMINAL TRIAL ATTORNEY

• CERTIFIED BY THE SUPREME
COURT OF NEW JERSEY AS A
MATRIMONIAL LAW ATTORNEY

Reply to: Woodland Park
Tel: 973.925.7341
Fax: 973.247.9199
Email: jb@ansellgrimm.com

November 27, 2019

Via Federal Express and E-mail

Judith M. Persichilli, RN, BSN, MA
Acting Commissioner
New Jersey Department of Health
369 South Warren Street
Trenton, New Jersey 08608
E-mail: dhss.surveys@doh.nj.gov; mmpquestions@doh.nj.gov

Re: Garden State Operations, LLC (Application Control Nos. 19-0093 & 19-0094) Request for Stay of Issuance of Processing of Permits to Operate Vertically Integrated Medical Marijuana Alternative Treatment Center Pending Appeal Pursuant to New Jersey Court Rule 2:9-7

Dear Acting Commissioner Persichilli:

This office represents applicant Garden State Operations, LLC (“Garden State”) in connection with its applications for cultivation and dispensary permits (“ATC Permit”) submitted pursuant to the 2019 Request for Applications. Simultaneously with this request, Garden State has filed a notice of appeal of the Department of Health’s (the “Department”) November 18, 2019 letters advising Garden State’s applications for an ATC Permit were disqualified from the permitting process for the northern and central regions due to allegedly inaccessible application materials (the “Letters”). A true and correct copy of the Letters are attached hereto as **Exhibit A**,

and a true and correct copy of Garden State's November 27, 2019 Notices of Appeal are attached hereto as **Exhibit B**.

Pursuant to New Jersey Court Rule 2:9-7, application is hereby made to the Department for a stay of any further Department administrative agency processes with respect to the award of ATC Permits pending this appeal. As set forth below, it is now apparent that the basis of Garden State's appeal – purportedly inaccessible PDF documents submitted with its application – were not caused by Garden State, but, rather through an error in the Department's technology which inexplicably prevented the Department from accessing zip files, the most ubiquitous file compression program in the world. Indeed, every computer has a program which permits unpacking of zip files and, more to the point, the Department's protocols for submission of online documents did not prohibit submission of zip files. Moreover, it appears that a number of other applicants also were disqualified on the same grounds relating to corrupt or inaccessible application materials. Removing a potentially large number of applicants from consideration because of the Department's own corrupt application form or technological insufficiency does not serve the interests of the medical marijuana patients of this State and is an illogical and arbitrary way to respond to an apparent widespread problem.

Taking the measure of providing notice to disqualified applicants immediately prior to announcing winners enhances the potential deprivation of due process rights. To the extent that Garden State is correct that the Department improperly excluded a number of applications because the Department was unable to access properly submitted documents, it would stand to reason that Garden State should have been scored with other applicants. However, if the Department elects to reject this request for a stay, and instead moves forward with awarding permits, such a move threatens the validity of the entire process if Garden State prevails on its claims as a large number of applicants will have been disqualified as a result of a random technological error caused by the State. Accordingly, a stay of any further Department administrative proceedings related to ATC Permits is required to preserve the *status quo* and ensure that the rights of all parties will be preserved pending the appeal process. Simply put, if the Appellate Division determines Garden State is correct, the Department has an issue that needs to be addressed ***now for the benefit of all potential applicants and the patients of New Jersey***, rather than through the months and years of an administrative appeal. The Department should swiftly act to allow submission of files inaccessible to the Department where applicants can prove that such files have a timestamp that predates the submission date, and insert those applications that are otherwise complete back into the scoring process before the process is finalized and winners are announced. For the Department to ignore this issue and announce winners in the face of clear and obvious evidence that the cause for disqualification is the Department's use of outdated technical systems would be arbitrary, capricious and unreasonable.

A short stay of further administrative proceedings is also in the public interest as the stay will ensure the Department issues ATC Permits to only the most-qualified applicants after giving due consideration to all ATC Permit applicants. The issuance of a stay is further warranted under the factors for injunctive relief set forth in the New Jersey Supreme Court decision of *Crowe v. DeGioia*, 90 N.J. 126, 132–34 (1982). Under *Crowe*, a party seeking injunctive relief must demonstrate: (1) danger of immediate or irreparable harm if the request is not granted; (2) a clear likelihood of success on the merits; (3) the balancing of the relative hardships reveals that greater harm would occur if the stay is not granted than if it were; and (4) consideration of public interest militates in favor of the stay. *Id.*

Where, as here, an injunction is merely designed to preserve the *status quo*, courts and administrative agencies may take a less rigid view of the *Crowe* factors set forth above. See *Waste Management of New Jersey v. Morris County Municipal Utilities Authority*, 433 N.J. Super. 445, 453 (App. Div. 2013) (quoting *Waste Management of New Jersey, Inc. v. Union County Utilities Authority*, 399 N.J. Super. 508, 520 (App. Div. 2008)). Similarly, courts and administrative agencies also may more liberally issue injunctive relief under *Crowe* where the public interest is implicated. *Id.* at 454 (internal citations omitted) (stating that courts “may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved”).

As set forth herein, Garden State can clearly satisfy each of the four factors of the *Crowe* test. A stay of further Department administrative proceedings also will preserve the *status quo* pending Garden State’s appeal and benefits the public interest, thus triggering the “less rigid” application of the *Crowe* factors. Accordingly, the Department’s issuance of a stay is plainly warranted on this record pending Garden State’s appeal.

Regarding the first *Crowe* factor, Garden State and numerous other applicants, as well as the intended permittees, are in danger of immediate and irreparable harm if the stay request is not granted. Specifically, the disqualification of numerous applicants such as Garden State due to allegedly inaccessible application materials resulting from the Department’s own online submission portal could result in the most-qualified applicants being arbitrarily and unlawfully denied ATC Permits through no fault, act, or omission of their own. Applicants like Garden State who were disqualified due to the Department’s submission process will have no adequate and available remedy should the Department deny the stay request and proceed with further administrative action. At the same time, the intended permittees will be left in limbo with potentially unrecoverable economic losses while the Appellate Division assesses the validity of the permitting process and the disqualification of applicants relating to the submission of allegedly inaccessible files. Excluding a potentially large number of applicants from the scoring process as

a result of a technological issue that was created by the Department certainly threatens the results of the entire permitting process.

Garden State also has a clear likelihood of success on the merits based on the facts here. In less than a week since the issuance of the Department's Letters to Garden State, it has already learned of between 8 to 15 other applicants who were similarly disqualified due to file corruption or compression issues. Plainly, the failure to examine the substance of properly submitted applications is an arbitrary and capricious decision by the Department which will be overturned on appeal.

It also is deeply troubling that the Department has failed to provide applicants any type of administrative review of this process. Instead, after waiting almost two months from the completeness review finished on September 25, 2019, the Department issued its final agency decisions on the eve of an announcement of winners and instructed disqualified applicants that they should file an appeal directly with the Appellate Division. Garden State and other applicants were not provided an opportunity to submit materials proven to be accessible, to offer an explanation for the purportedly inaccessible files, or to otherwise establish facts or provide law supporting a challenge to the Department's choice to disqualify Garden State, in clear violation of Garden State's due process rights under New Jersey law. The Department likewise has entirely failed to develop a record or otherwise make findings allowing the Appellate Division to engage in a meaningful appellate review, further strengthening Garden State's likelihood of success on the merits.

Next, the balancing of the hardships weighs in favor of a stay in this case because the absence of a stay may well result in irreparable damages to Garden State and similarly-situated applicants, as well as the intended permittees. It is clear that no harm will be occasioned by a short delay in the issuance of ATC Permits pending a review of this matter on appeal. Alternatively, if the ATC Permits are issued pending appeal, in the event that the Appellate Division throws out this arbitrary process or remands for rescoring or revising of the process, the future permittees may have expended considerable sums in obtaining zoning and planning approvals, acquiring property, exercising options, and engaging in other permitting and siting endeavors that ultimately will result in uncompensated economic loss, a hallmark of irreparable harm. Likewise, Garden State may be subject to arguments that it has no remedy because the process already has proceeded. A balancing of the potential harm to be realized without a stay against the lack of harm by maintaining the *status quo* during a short appellate process militates in favor of a stay pending appeal. Respectfully, the Department has a chance now, with a stay, to reverse its final agency decision, exercise its considerable discretion to right this wrong, and ensure that all qualifying applicants are scored to ensure that the best operators for New Jersey and its patients are selected, rather than just those applicants who by happenstance were lucky enough not to have the Department's online

portal render their files inaccessible. Any other result flies in the face of logic, good governance and the interests of patients.

Regarding the fourth and final *Crowe* factor, a stay of any further Department proceedings related to ATC Permits is clearly in the public interest given that this important program, which serves the needs of numerous sick and suffering New Jersey citizens, will undoubtedly be impacted by the award of ATC Permits and further implementation of the program. Absent a stay, the public interest is harmed by the processing of those permits where Appellate review may reveal that a better or more appropriate process should have been utilized to obtain the best candidates to fulfill this important program. Public confidence in this program also may be undermined by a process that is not transparent, does not provide an opportunity for review and for which the record has been withheld from the remaining applicants. The public interest demands that a stay be entered to ensure that this does not happen.

Finally, on a balancing of the equities, maintenance of the *status quo* in this case benefits all parties while the appeal is pending. Again, the Department need not delay this process indefinitely. It has an immediate remedy available to it: allow resubmission of materials improperly rejected by the Department and insert those applicants into the scoring pool. This can be done immediately, with little or no delay to the selection of winners. By taking this measure, no permittees will necessarily expend effort or funds in furtherance of their permit during the pendency of Appellate review. None of the pending appellants will be harmed or run the risk of their appeal being rendered moot by the expenditure of funds by successful applicants. Moreover, the Department will avoid perhaps a dozen or more administrative appeals that will show that the technological submission issues stem from the Department's own forms. All parties' interests are preserved by the *status quo* and none are harmed by the *status quo*.

Because Garden State can clearly satisfy each of the four *Crowe* factors as set forth above, and because a stay in this instance will merely preserve the *status quo* and also benefit the public interest, it is respectfully submitted that the Department must issue a stay of any further administrative action with respect to ATC Permits pursuant to New Jersey Court Rule 2:9-7. As the Department is undoubtedly aware, there have been numerous public statements from those in and around the Department, and in the press indicating that an award of permits is expected prior to the end of December, and last year, on a similar schedule, an announcement was made on December 17, 2018. For all the reasons set forth above, if the Department makes an award of licenses prior to resolving the issues described here, it does so at its own peril. The proverbial milk will have been spilled once the Department makes a public announcement, making the resolution of these issues hopelessly more complicated, time consuming, and, frankly, expensive for all parties involved, including the Department.

Judith M. Persichilli, RN, BSN, MA

November 27, 2019

Page 6

As a result, Garden State respectfully requests that your office respond to this stay request no later than the earlier of (i) its planned date of announcement of permittees; or (ii) Monday, December 2, 2019. If Garden State does not receive a response to this stay request prior to such date it will be forced to treat such failure to respond as a denial of its request so that it may seek emergent relief from the Appellate Division.

If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Very truly yours,



Joshua S. Bauchner

JSB/cs

Enclosures

cc: Jeff Brown, Assistant Commissioner, Medical Marijuana (via Federal Express w/enclosure)

EXHIBIT A



State of New Jersey
DEPARTMENT OF HEALTH

PO BOX 360
TRENTON, N.J. 08625-0360

www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Acting Commissioner

November 18, 2019

Jill Lamoureux
Garden State Operations LLC
2748 Hughs Dr.
Erie, CO 80516

Dear Jill Lamoureux:

The Department of Health (Department) received your application for a cultivation endorsement on August 21, 2019 to operate an Alternative Treatment Center (ATC) pursuant to N.J.S.A. 24:6I-1 et seq.

On July 1, 2019, the Department of Health (Department) posted a Request for Applications (RFA) to operate up to twenty-four Alternative Treatment Centers (ATCs), with up to eight in each of the Northern and Central Regions, up to seven in the Southern Region, and one "at-large" for which the region would be determined at the time of award. The RFA was for up to fifteen dispensaries, five cultivation sites, and four Vertically Integrated ATCs (dispensing, cultivation and manufacturing).

Applications for a cultivation endorsement were due to the Department no later than August 22, 2019 at 3:00 PM. Applicants had the choice of whether to submit the application online and only submit signed cover-sheets and checks in person, or to submit the whole application in paper form.

The Department received 196 applications. An initial completeness review of all 196 received applications was conducted by the Department and applications found to be complete were released to the Selection Committee beginning on September 25, 2018 for review and evaluation.

During the completeness review, the following application submitted was found to be incomplete:

Applicant Name: Garden State Operations LLC

Application Control Number: 19-0093

Region: North

Specifically, the following mandatory document(s) were inaccessible by reviewers due to file corruption:

- Documentation of a valid Business Registration Certificate on file with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.
- Evidence that the business entity is in good standing with the New Jersey Department of the Treasury.
- Evidence that all principals, directors, board members, owners and employees will cooperate with a criminal history record background check, pursuant to N.J.A.C. 8:64-7.2:
 - One or more Personal History Disclosure was missing entirely or inaccessible to reviewers.
- Evidence of compliance with local codes and ordinances, including but not limited to distances from schools.
- Evidence of ownership or lease of the proposed site(s) for the ATC.
- Text and graphic materials showing the exterior appearance of the ATC and its site compatibility with commercial structures already constructed or under construction within the immediate neighborhood.

Additionally, the application was missing the following mandatory document(s):

- Written verification of the approval of the community or governing body of the municipality in which the alternative treatment center is or will be located.

Accordingly, the listed application was not released to the selection committee and has been disqualified for being non-responsive to one or more mandatory requirements. As stated in the RFA, failure to comply with the mandatory requirements for the application would result in disqualification from the selection process.

You have the right to appeal this decision to the Superior Court of New Jersey, Appellate Division, within 45 days of 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
 PO Box 006
 Trenton, NJ 08625

Pursuant to N.J.A.C. 8:64-6.5 and the terms of the RFA, your check for \$18,000 will be destroyed. Thank you for the interest in operating an ATC.

Respectfully,



Judith Persichilli
 Acting Commissioner



State of New Jersey
DEPARTMENT OF HEALTH
PO BOX 360
TRENTON, N.J. 08625-0360
www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Acting Commissioner

November 18, 2019

Jill Lamoureux
Garden State Operations LLC
2748 Hughs Drive
Erie, CO 80516

Dear Jill Lamoureux:

The Department of Health (Department) received your application for a dispensary endorsement on August 21, 2019 to operate an Alternative Treatment Center (ATC) pursuant to N.J.S.A. 24:6I-1 et seq.

On July 1, 2019, the Department of Health (Department) posted a Request for Applications (RFA) to operate up to twenty-four Alternative Treatment Centers (ATCs), with up to eight in each of the Northern and Central Regions, up to seven in the Southern Region, and one "at-large" for which the region would be determined at the time of award. The RFA was for up to fifteen dispensaries, five cultivation sites, and four Vertically Integrated ATCs (dispensing, cultivation and manufacturing).

Applications for a dispensary endorsement were due to the Department no later than August 21, 2019 at 3:00 PM. Applicants had the choice of whether to submit the application online and only submit signed cover-sheets and checks in person, or to submit the whole application in paper form.

The Department received 196 applications. An initial completeness review of all 196 received applications was conducted by the Department and applications found to be complete were released to the Selection Committee beginning on September 25, 2018 for review and evaluation.

During the completeness review, the following application submitted was found to be incomplete:

Applicant Name: Garden State Operations LLC

Application Control Number: 19-0094

Region: Central

Specifically, the following mandatory document(s) were inaccessible by reviewers due to file corruption:

- Documentation of a valid Business Registration Certificate on file with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.
- Evidence that the business entity is in good standing with the New Jersey Department of the Treasury.

Additionally, the following mandatory document(s) were missing entirely:

- Written verification of the approval of the community or governing body of the municipality in which the alternative treatment center is or will be located.

Accordingly, the listed application was not released to the selection committee and has been disqualified for being non-responsive to one or more mandatory requirements. As stated in the RFA, failure to comply with the mandatory requirements for the application would result in disqualification from the selection process.

You have the right to appeal this decision to the Superior Court of New Jersey, Appellate Division, within 45 days of 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
PO Box 006
Trenton, NJ 08625

Pursuant to N.J.A.C. 8:64-6.5 and the terms of the RFA, your check for \$18,000 will be destroyed. Thank you for the interest in operating an ATC.

Respectfully,



Judith Persichilli
Acting Commissioner

EXHIBIT B



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW) IN THE MATTER OF APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	ATTORNEY / LAW FIRM / PRO SE LITIGANT NAME ANTHONY JOSEPH D'ARTIGLIO, Esq. STREET ADDRESS 365 RIFLE CAMP RD CITY STATE ZIP PHONE NUMBER WOODLAND PARK NJ 07424 973-247-9000 EMAIL ADDRESS AJD@ANSELLGRIMM.COM CAROLS@ANSELLGRIMM.COM (*)
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ON APPEAL FROM		
TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY	TRIAL COURT OR AGENCY NUMBER
	HEALTH	NO

Notice is hereby given that **GARDEN STATE OPERATIONS LLC** appeals to the Appellate Division from a Judgment or Order entered on _____ in the Civil Criminal or Family Part of the Superior Court Tax Court or from a State Agency decision entered on **11/18/2019**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief pre-trial detention
 If post-conviction relief, is it the 1st 2nd other _____ specify

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender self private counsel _____ specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	HEALTH	11/27/2019
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		11/27/2019

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
STATE OF NEW JERSEY	MELISSA H RAKSA, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 DOL.APPEALS@LAW.NJOAG.GOV (DOLAPPEALS@LPS.STATE.NJ.US,DOLAPPEALS@LPS.STATE.NJ.US)	11/27/2019

Attached transcript request form has been served where applicable on the following:

Name	Date of Service
Transcript Office	
Clerk of the Tax Court	
State Agency	

Exempt from submitting the transcript request form due to the following:

- There is no verbatim record for this appeal.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

11/27/2019
Date

s/ ANTHONY JOSEPH D'ARTIGLIO, Esq.
Signature of Attorney or Pro Se Litigant

BAR ID #

117682014

EMAIL ADDRESS **AJD@ANSELLGRIMM.COM,CAROLS@ANSELLGRI
MM.COM**



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

Additional appellants continued below

Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

**PARTY NAME: GARDEN STATE OPERATIONS LLC ATTORNEY NAME: ANTHONY JOSEPH
D'ARTIGLIO, Esq.
AJD@ANSELLGRIMM.COM
CAROLS@ANSELLGRIMM.COM
JB@ANSELLGRIMM.COM**

Respondent's attorney email address continued below

Additional Party's attorney email address continued below



New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

Please type or clearly print all information.

Title in Full IN THE MATTER OF APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	Trial Court or Agency Docket Number NO
--	--

• Attach additional sheets as necessary for any information below.

Appellant's Attorney Email Address: **AJD@ANSELLGRIMM.COM**
CAROLS@ANSELLGRIMM.COM (*)

Plaintiff Defendant Other (Specify) **PETITIONER**

Name ANTHONY JOSEPH D'ARTIGLIO, Esq.	Client GARDEN STATE OPERATIONS LLC
Street Address 365 RIFLE CAMP RD	City State Zip Telephone Number WOODLAND PARK NJ 07424 973-247-9000

Respondent's Attorney Email Address: **DOL.APPEALS@LAW.NJOAG.GOV**
DOLAPPEALS@LPS.STATE.NJ.US

Plaintiff Defendant Other (Specify)

Name MELISSA H RAKSA, Esq.	Client STATE OF NEW JERSEY
Street Address 25 MARKET ST PO BOX 112	City State Zip Telephone Number TRENTON NJ 08625 609-984-3900

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:
The November 18, 2019 Decision by the New Jersey Department of Health disqualifying Garden State Operations from the July 1, 2019 Request for Applications for an Alternative Treatment Centers because certain mandatory documents were allegedly inaccessible to reviewers despite submission through the Department of Health's online portal.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.) Yes No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2? Yes No N/A

- A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.
- B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter

is final and appealable as of right.

Were any claims dismissed without prejudice?

Yes No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (*R. 2:5-1(g)*) Yes No

Give a Brief Statement of the Facts and Procedural History:

On July 1, 2019 the New Jersey Department of Health ("DOH") posted a Request for Applications ("RFA") for operation of new Alternative Treatment Centers ("ATCs"), including four Vertically Integrated ATCs. The DOH set a deadline for submitting applications in response to the RFA of August 22, 2019. The DOH encouraged prospective applicants to submit documents in PDF format through an online portal. On or prior to August 22, 2019, Garden State Operations ("Garden State") submitted an application for a Vertically Integrated ATC utilizing the DOH's online portal. On November 18, 2019, the DOH issued a notice rejecting Garden State's application alleging that certain of the documents from the online portal were inaccessible to reviewers. Therefore, Garden State has been excluded from the RFA process despite submitting all required documents to the DOH in a timely fashion.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to *R. 2:5-2(a)(6)*. (Appellant or cross-appellant only.):

- 1. Whether the Department's decision to disqualify Garden State Operations LLC ("Garden State") from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when there is absolutely no evidence that the allegedly corrupt application materials were, in fact, corrupt prior to being uploaded by Garden State to the Department's online submission portal?**
- 2. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when it was the Department's own online submission portal and/or recipient computer system that corrupted said documents, and in no way was the file corruption due to any act or omission on the part of Garden State?**
- 3. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department knew that numerous applicants' submitted applications evidenced a technological error that likely was due to the Department's own online submission portal, but failed to notify Garden State of the apparent technological problem or present Garden State with an opportunity to re-submit its allegedly corrupt application materials?**
- 4. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department knew that numerous applicants' applications evidenced a technological error, but failed to conduct any internal review process to verify whether the technological problem(s) were due to the Department's own online submission portal?**
- 5. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department failed to comply with N.J.A.C. 8.64-6.3 and "verify" the information contained in Garden State's application by contacting Garden State by phone, mail, e-mail, on-site visit, or face-to-face meeting in an effort to resolve the technological issue at hand?**
- 6. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal provided Garden State with no opportunity to preview or review its final submission prior to, or upon, submission, making it impossible for Garden State to verify the uploaded application materials' compatibility with the Department's online submission portal?**
- 7. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal accepted Garden State's application in its**

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised: 04/02/2016, CN 10501 (Appellate Civil CIS)

page 2 of 5

entirety, without caveat, reinforcing Garden State's belief that it had properly submitted its application materials to the Department?

8. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal when several of the allegedly corrupt files submitted were created by the State of New Jersey, rather than by Garden State, and were uploaded by Garden State in the exact form produced by the State?

9. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was not supported by substantial credible evidence in the record where the Department issued such decision without any internal review process to verify whether the technological problem(s) were due to the Department's own online submission portal and failed to present Garden State with any evidence that the alleged corruption was due to an act or omission on the part of Garden State?

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ Yes No
2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ Yes No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? Yes No Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:

- (A) Arises from substantially the same case or controversy as this appeal? Yes No
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes No

If the answer to the question above is Yes, state:

Case Title	Trial Court Docket#	Party Name
------------	---------------------	------------

2. Was there any prior appeal involving this case or controversy? Yes No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.) IN THE MATTER OF APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	Appellate Division Docket Number A-001272-19
IN THE MATTER OF THE APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	A-001275-19
IN THE MATTER OF THE APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	A-001283-19

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. Yes No

Explain your answer:

Garden State Operations LLC believes the rejection of the application results form merely a technical error

(*) truncated due to space limit. Please find full information in the additional pages of the form.

from the Department of Health, thus a settlement conference could resolve the outstanding dispute.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

GARDEN STATE OPERATIONS LLC

Name of Appellant or Respondent

ANTHONY JOSEPH D'ARTIGLIO, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

11/27/2019

Date

Esq.

s/ **ANTHONY JOSEPH D'ARTIGLIO,**
Signature of Counsel of Record
(or your signature if not represented by counsel)

117682014

Bar #

AJD@ANSELLGRIMM.COM,CAROLS@ANSELLGRIMM.COM

Email Address



New Jersey Judiciary
Superior Court - Appellate Division
CIVIL Case Information Statement

Additional appellants continued below

Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

**PARTY NAME: GARDEN STATE OPERATIONS LLC ATTORNEY NAME: ANTHONY JOSEPH
D'ARTIGLIO, Esq.
AJD@ANSELLGRIMM.COM
CAROLS@ANSELLGRIMM.COM
JB@ANSELLGRIMM.COM**

Respondent's attorney email address continued below

Additional Party's attorney email address continued below



**New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal**

TITLE IN FULL (AS CAPTIONED BELOW) IN THE MATTER OF THE APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	ATTORNEY / LAW FIRM / PRO SE LITIGANT			
	NAME ANTHONY JOSEPH D'ARTIGLIO, Esq.			
	STREET ADDRESS 365 RIFLE CAMP RD			
	CITY WOODLAND PARK	STATE NJ	ZIP 07424	PHONE NUMBER 973-247-9000
	EMAIL ADDRESS AJD@ANSELLGRIMM.COM CAROLS@ANSELLGRIMM.COM (*)			

ON APPEAL FROM		
TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY HEALTH	TRIAL COURT OR AGENCY NUMBER NO

Notice is hereby given that **GARDEN STATE OPERATIONS LLC** appeals to the Appellate Division from a Judgment or Order entered on _____ in the Civil Criminal or Family Part of the Superior Court Tax Court or from a State Agency decision entered on **11/18/2019**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:
Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief pre-trial detention
If post-conviction relief, is it the 1st 2nd other _____ specify

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:
 Public Defender self private counsel _____ specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	HEALTH	11/27/2019
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		11/27/2019

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
STATE OF NEW JERSEY	MELISSA H RAKSA, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 DOL.APPEALS@LAW.NJOAG.GOV (DOLAPPEALS@LPS.STATE.NJ.US,DOLAPPEALS@LPS.STATE.NJ.US)	11/27/2019

Attached transcript request form has been served where applicable on the following:

Name	Date of Service
Transcript Office	
Clerk of the Tax Court	
State Agency	

Exempt from submitting the transcript request form due to the following:

There is no verbatim record for this appeal.

Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by *N.J.S.A. 22A:2* has been paid.

11/27/2019

Date

s/ ANTHONY JOSEPH D'ARTIGLIO, Esq.

Signature of Attorney or Pro Se Litigant

BAR ID #

117682014

EMAIL ADDRESS **AJD@ANSELLGRIMM.COM,CAROLS@ANSELLGRI
MM.COM**



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

Additional appellants continued below

Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

**PARTY NAME: GARDEN STATE OPERATIONS LLC ATTORNEY NAME: ANTHONY JOSEPH
D'ARTIGLIO, Esq.
AJD@ANSELLGRIMM.COM
CAROLS@ANSELLGRIMM.COM
JB@ANSELLGRIMM.COM**

Respondent's attorney email address continued below

Additional Party's attorney email address continued below



New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

Please type or clearly print all information.

Title in Full IN THE MATTER OF THE APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	Trial Court or Agency Docket Number NO
--	--

• Attach additional sheets as necessary for any information below.

Appellant's Attorney Email Address: **AJD@ANSELLGRIMM.COM**
CAROLS@ANSELLGRIMM.COM (*)

Plaintiff Defendant Other (Specify) **PETITIONER**

Name ANTHONY JOSEPH D'ARTIGLIO, Esq.	Client GARDEN STATE OPERATIONS LLC
Street Address 365 RIFLE CAMP RD	City State Zip Telephone Number WOODLAND PARK NJ 07424 973-247-9000

Respondent's Attorney Email Address: **DOL.APPEALS@LAW.NJOAG.GOV**
DOLAPPEALS@LPS.STATE.NJ.US

Plaintiff Defendant Other (Specify)

Name MELISSA H RAKSA, Esq.	Client STATE OF NEW JERSEY
Street Address 25 MARKET ST PO BOX 112	City State Zip Telephone Number TRENTON NJ 08625 609-984-3900

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:
The November 18, 2019 Decision by the New Jersey Department of Health disqualifying Garden State Operations LLC from the July 1, 2019 Request for Applications for an Alternative Treatment Centers because certain mandatory documents were allegedly inaccessible to reviewers despite submission through the Department of Health's online portal.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.) Yes No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2? Yes No N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter

is final and appealable as of right.

Were any claims dismissed without prejudice?

Yes No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) Yes No

Give a Brief Statement of the Facts and Procedural History:

On July 1, 2019 the New Jersey Department of Health ("DOH") posted a Request for Applications ("RFA") for operation of new Alternative Treatment Centers ("ATCs"), including four Vertically Integrated ATCs. The DOH set a deadline for submitting applications in response to the RFA of August 22, 2019. The DOH encouraged prospective applicants to submit documents in PDF format through an online portal. On or prior to August 22, 2019, Garden State Operations LLC ("Garden State") submitted an application for a Vertically Integrated ATC utilizing the DOH's online portal. On November 18, 2019, the DOH issued a notice rejecting Garden State's application alleging that certain of the documents from the online portal were inaccessible to reviewers.

Therefore, Garden State has been excluded from the RFA process despite submitting all required documents to the DOH in a timely fashion.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

- 1. Whether the Department's decision to disqualify Garden State Operations ("Garden State") from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when there is absolutely no evidence that the allegedly corrupt application materials were, in fact, corrupt prior to being uploaded by Garden State to the Department's online submission portal?**
- 2. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when it was the Department's own online submission portal and/or recipient computer system that corrupted said documents, and in no way was the file corruption due to any act or omission on the part of Garden State?**
- 3. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department knew that numerous applicants' submitted applications evidenced a technological error that likely was due to the Department's own online submission portal, but failed to notify Garden State of the apparent technological problem or present Garden State with an opportunity to re-submit its allegedly corrupt application materials?**
- 4. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department knew that numerous applicants' applications evidenced a technological error, but failed to conduct any internal review process to verify whether the technological problem(s) were due to the Department's own online submission portal?**
- 5. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department failed to comply with N.J.A.C. 8.64-6.3 and "verify" the information contained in Garden State's application by contacting Garden State by phone, mail, e-mail, on-site visit, or face-to-face meeting in an effort to resolve the technological issue at hand?**
- 6. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal provided Garden State with no opportunity to preview or review its final submission prior to, or upon, submission, making it impossible for Garden State to verify the uploaded application materials' compatibility with the Department's online submission portal?**
- 7. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal accepted Garden State's application in its**

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Revised: 04/02/2016, CN 10501 (Appellate Civil CIS)

entirety, without caveat, reinforcing Garden State's belief that it had properly submitted its application materials to the Department?

8. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was arbitrary, capricious and unreasonable when the Department's online submission portal when several of the allegedly corrupt files submitted were created by the State of New Jersey, rather than by Garden State, and were uploaded by Garden State in the exact form produced by the State?

9. Whether the Department's decision to disqualify Garden State from receiving an ATC permit in the July 2019 RFA due to allegedly corrupt electronically submitted application materials was not supported by substantial credible evidence in the record where the Department issued such decision without any internal review process to verify whether the technological problem(s) were due to the Department's own online submission portal and failed to present Garden State with any evidence that the alleged corruption was due to an act or omission on the part of Garden State?

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ Yes No
2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ Yes No
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- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes No

If the answer to the question above is Yes, state:

Case Title	Trial Court Docket#	Party Name
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2. Was there any prior appeal involving this case or controversy? Yes No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.) IN THE MATTER OF APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	Appellate Division Docket Number A-001272-19
IN THE MATTER OF THE APPLICATION OF MEDICINAL MARIJUANA ALTERNATIVE TREATMENT CENTER	A-001275-19

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. Yes No

Explain your answer:

Garden State Operations believes the rejection of the application results from merely a technical error from the Department of Health, thus a settlement conference could resolve the outstanding dispute.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate

Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

GARDEN STATE OPERATIONS LLC

Name of Appellant or Respondent

ANTHONY JOSEPH D'ARTIGLIO, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

11/27/2019

Date

Esq.

s/ ANTHONY JOSEPH D'ARTIGLIO,

Signature of Counsel of Record
(or your signature if not represented by counsel)

117682014

Bar #

**AJD@ANSELLGRIMM.COM,CAROLS@ANSELLGRI
MM.COM**

Email Address



New Jersey Judiciary
Superior Court - Appellate Division
CIVIL Case Information Statement

Additional appellants continued below

Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

**PARTY NAME: GARDEN STATE OPERATIONS LLC ATTORNEY NAME: ANTHONY JOSEPH
D'ARTIGLIO, Esq.
AJD@ANSELLGRIMM.COM
CAROLS@ANSELLGRIMM.COM
JB@ANSELLGRIMM.COM**

Respondent's attorney email address continued below

Additional Party's attorney email address continued below