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October 24, 2023

VIA FEDEX

Mr. Rex Vaughn
Alabama Medical Cannabis Commission
2622 Old Monrovia Rd NW
Huntsville, AL 35806

Re: The Darren Wesley Ato Hall Compassion Act

Dear Commissioner:

I write as one of the lawyers involved in the pending litigation relating to the Alabama Medical Cannabis Commission. Rather than dwell on my client's application, I want to express to you some concerns that we continue to have regarding the process. I would like to thank the Commission for its service and its efforts to fix the broken process that has plagued the application process. But those valiant efforts, unfortunately, do not address some key components of the law, and I write to bring those to your attention in hopes that the Commission can remedy these issues, proceed to award and issue licenses, and help bring medical cannabis as quickly as possible to those Alabamians who desperately need it.

The biggest issue is that the scores from the University of South Alabama (USA) cannot be considered. Alabama law requires that "rules," like the scoring system or the application guide on which the USA scores are based, must be adopted in a certain way under Alabama law (for example, the rules must be subject to public notice and comment). The scoring system used by USA was not adopted in that way.

In addition, the scoring system fails to consider many statutory requirements that are essential to the key goal of growing and producing medical cannabis as quickly as possible to get it to Alabamians—a top priority of the Act and of this Commission. But the scoring system used by USA does not even consider this priority.

First, the application guide on which the scoring was based required integrated facility applicants to submit only two exhibits that concerned their grow and dispensary facilities. Those two exhibits accounted for only 800 points out of a total 6,000 points. On the other hand, the guide called for ten exhibits concerning an applicant's transportation qualifications (e.g., an applicant's vehicles, drivers' licenses, fleet summary, and care and maintenance of vehicles, among other things). Those transportation exhibits accounted for 1,500 of the total 6,000 points awarded by USA—even though nothing in the statutes or regulations requires applicants to satisfy such transportation requirements. One might suspect that such an emphasis on transportation (as opposed to the ability to actually grow cannabis) was put in the application guide to give certain applicants an advantage.

Second, the scoring system does not consider whether an applicant can commence cultivation within 60 days, an express requirement of the statute, which was intended to ensure that licensees can get medicine to Alabamians quickly. *See* Ala. Code § 20-2A-62(a)(3) (noting that an applicant for a cultivator license (including an integrated facility license) “*shall demonstrate the ability to commence cultivation of cannabis within 60 days of application approval*”). There is nothing in the application guide or the application on which the USA scores are based that requires applicants to satisfy this 60-day requirement.

We believe that many applicants cannot meet this 60-day requirement. Indeed, the applicant that USA scored #1 of all the integrated facility applicants has implied in open court that they do not even have a facility:

And the awarding of that license then puts an obligation on the person who received that award to go out and spend millions of dollars to build their facility so they can come out and inspect it and go, yeah, you did what you said you're going to do. You built what your plans -- what your application said, so we're going to issue we're going to issue -- we're going to do this administrative act, the second step, and issue you a paper license.

The regulations provide that a license must be issued no less than 28 days after the license is “awarded.” There is no way that an applicant who has not already built a facility at the time of the “award” can construct a multimillion-dollar facility that is capable of commencing cultivation within 60 days after the award is announced. This timeline will be lengthened by inevitable shortages and delays in obtaining equipment, such as grow lights and HVAC systems to name just a couple, necessary for cultivating medical grade cannabis. Simply put, if an applicant does not have a facility built, it will not be able commence cultivation within 60 days.

Third, the scoring system does not require an inspection of applicants’ facilities “prior to” the award of a license—another requirement of the statute. Ala. Code § 20-2A-53(a)(4). No site inspections have occurred. We ask the Commission to conduct such inspections before awarding licenses for two reasons: first, to ensure compliance with the law, and second, to ensure that the award winners can actually bring medical cannabis to Alabamians quickly.

Fourth, the scoring system does not take into account whether an applicant has actually

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obtained a \$2 million performance bond—another statutory requirement. *See* Ala. Code § 20-2A-62(d)–(e). Securing such a \$2 million performance bond is not an easy or inexpensive task.

These are just some of the ways in which the scores are hopelessly flawed. We therefore urge the Commission to reject using the scores. If the scores remain, or if they are considered in any way, the scores will be used by applicants who are not awarded a license to attack the award winners. The reality is that this process will, regrettably, be subject to unending litigation if the Commission continues to use the scores.

Finally, please note that, in the spirit of compromise, we made some suggestions on how to get the application process back on track to the Commissioner's counsel over a month ago. We never heard back. Also, as I am sure you are aware, the Commissioners have each been sued for violating the Open Meetings Act. We told the Commissioner's counsel that we have no interest in having the Commissioners fined, but we do have an interest in making sure this process proceeds according to the law. To be quite clear, we will continue our efforts to make that happen and remain hopeful that, through open dialogue (like this letter) and your continued hard work, we can ensure that this process proceeds according to the law.

Sincerely,



William G. Somerville