

## **Judge orders marijuana licenses restored**

A judge has ordered state regulators to allow a company previously headed by former congressman William Delahunt to move forward with plans to open medical marijuana dispensaries in Mashpee and Plymouth, ruling it was improperly denied licenses last year.

In a 22-page ruling Monday, a Suffolk Superior Court judge found that the Department of Public Health failed to follow its own regulations in June when it rejected a bid by Medical Marijuana of Massachusetts to open three dispensaries, after initially supporting it.

The denial came five months after the company scored the highest among 100 applicants and was among 20 selected to move on to the inspection phase. It also paid a \$50,000 registration fee for each of its three proposed dispensaries.

Suffolk Superior Court Judge Mitchell H. Kaplan concluded that the state launched an additional review of applications following a barrage of criticism about the controversial selection process, then ruled against Medical Marijuana of Massachusetts without allowing it to address concerns. By then, he said, the company had already invested significantly in its planned facilities.

Revisiting issues that had been previously disclosed by the company “and then ‘non-selecting’ the applicant based on that second look, caused MMM precisely the type of prejudice that the regulatory scheme was intended to prevent: the expenditure of substantial sunk costs that MMM has no means to recover,” Kaplan wrote.

It is unclear whether the state will appeal the ruling. Scott Zoback, a spokesman for the Department of Public Health, said the agency is reviewing the decision and the medical marijuana program’s “top priority is ensuring safe, appropriate patient access across the Commonwealth.”

The judge said the state may still refuse to issue dispensary licenses to the company if it fails to correct deficiencies in its bid or pass inspection.

Delahunt, who resigned from the company in September and said he has no financial interest in it, on Tuesday called the selection process unethical and adversarial.

“The process was outrageous,” Delahunt said Tuesday, adding that the state’s failure to work collaboratively with applicants has delayed the opening of any dispensaries.

He said, “How many lives could have been saved if they administered it in a way. . . that wasn’t adversarial but involved scrutiny, and people had the option to choose a well-regulated marijuana product, rather than oxycontin that are killing people?”

In June, state regulators notified Medical Marijuana of Massachusetts that it was denied licenses for not complying with nonprofit regulations because it planned to divert excessive revenues to a management company. The state also said it made incorrect representations on its application that suggested it had support from then-state Senate President Therese Murray.

Delahunt’s initial application for a license stated that the dispensary intended to give 50 percent of its revenue to a management firm controlled by Delahunt and his business partners in the dispensary. The company revised that to 25 percent after the Globe detailed the original arrangement.

Delahunt said the rejection letter by the state was “unethical” because it only referred to the management firm’s revenues, without listing its expenditures on behalf of the dispensaries. He said the company initially expected to operate at a loss.

He also called the allegation that the company misled the state about support from Murray “totally absurd.”

Noting the state had approved applicants that had similar business structures, Judge Kaplan said Medical Marijuana of Massachusetts “should be given the opportunity to cure its deficiency by adopting reasonable terms equivalent to what would be negotiated in an arms-length transaction.”

Kaplan’s ruling only applies to the company’s proposed dispensaries in Mashpee and Plymouth.

The judge said the company is no longer in a position to open a dispensary in Taunton because another firm won state approval and took over its proposed site.

Jonathan Herlihy, the chief executive officer of Medical Marijuana of Massachusetts, said he was hopeful that the company could win final state approval and be open for business by January in Mashpee and Plymouth.

“I’m going to do everything to make MMM successful for the people who want to use medical marijuana for health reasons,” he said.

Since Massachusetts voters in 2012 overwhelmingly approved the medical use of marijuana, not a single dispensary has opened, despite the state’s goal of having the first facilities open last summer. Fifteen licenses were awarded last year.

The selection process was delayed for months after news organizations and losing applicants raised concerns about misrepresentations, financial agreements, and conflicts of interest involving several companies that won initial approval.

The process sparked more than two dozen lawsuits against the health department.

Delahunt, who is now working with a group focusing on opiate addiction, said, “All I know is I was well motivated and I hope that medical marijuana moves forward.”

**By Shelley Murphy**