

DOCKET NO. HHB-CV-24-6088609-S	:	
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D&B WELLNESS, LLC,	:	SUPERIOR COURT
	:	
	:	
v.	:	J.D. OF NEW BRITAIN
	:	
CONNECTICUT DEPARTMENT OF	:	
CONSUMER PROTECTION, and	:	AT NEW BRITAIN
COMMISSIONER OF THE	:	
CONNECTICUT DEPARTMENT OF	:	
CONSUMER PROTECTION BRYAN	:	OCTOBER 21, 2024
CAFFERELLI (in his official capacity).	:	

MOTION TO DISMISS

Pursuant to Practice Book § 10-30, the defendants the Connecticut Department of Consumer Protection (“the Department”) and Commissioner of Consumer Protection Bryan Cafferelli (collectively “the Defendants”) move to dismiss the administrative appeal filed by plaintiff D&B Wellness, LLC, (the “Plaintiff”) for lack of subject matter jurisdiction. The Court should dismiss this appeal for the following reasons. First, the Court lacks jurisdiction to adjudicate an administrative appeal against the Defendants because the Plaintiff has failed to identify a final decision in a contested case for the purposes of Conn. Gen. Stat. § 4-183 of the Uniform Administrative Procedure Act (“UAPA”). Second, the relevant statute, Conn. Gen. Stat. § 21a-420u(g) of the Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”), Conn. Gen. Stat. § 21a-420 *et seq.*, does not provide a right to appeal the specific action taken by the Defendants. Third, even if there were a right to an appeal, Plaintiff was ineligible to receive a final license because it had not completed all the requirements for final licensure as required under Conn. Gen. Stat. § 21a-420g(k). And finally, Plaintiff’s

request for a writ of mandamus must fail because it has failed to identify a legal right to the extraordinary relief it seeks. Consequently, the Court should dismiss Plaintiff's Complaint in its entirety.

DEFENDANTS

CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION

and

COMMISSIONER OF THE CONNECTICUT
DEPARTMENT OF CONSUMER
PROTECTION, BRYAN CAFFARELLI (in his
official capacity)

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DOCKET NO. HHB-CV-24-6088609-S :

D&B WELLNESS, LLC,

v.

CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION, and
COMMISSIONER OF THE
CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION BRYAN
CAFFERELLI (in his official capacity).

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: SUPERIOR COURT
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: J.D. OF NEW BRITAIN
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: OCTOBER 21, 2024

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The defendants Connecticut Department of Consumer Protection (“the Department”) and Commissioner of Consumer Protection Bryan Cafferelli (collectively “the Defendants”) hereby submit this Memorandum of Law in support of their Motion to Dismiss. The Defendants’ issuance of an invoice for \$500,000 to the plaintiff D&B Wellness, LLC (the “Plaintiff”) is not a final decision in a contested case, for the purposes of Conn. Gen. Stat. § 4-183 of the Uniform Administrative Procedure Act (“UAPA”). Further, there is no right to an appeal provided under the Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”), Conn. Gen. Stat. § 21a-420 *et seq.* Accordingly, the Court should dismiss Plaintiff’s Complaint in its entirety.

I. BACKGROUND

Plaintiff is a medical marijuana dispensary licensee that sought to convert its dispensary license to a hybrid retailer license. See Complaint (“Cmpl.”), ¶ 34. A hybrid retailer license allows the licensee to sell both medical and adult-use cannabis to consumers. Pursuant to Conn. Gen. Stat. § 21a-420e, the license conversion fee for a dispensary facility is \$1,000,000, but a dispensary may pay a reduced fee of \$500,000 if

it commits to creating at least one equity joint venture (“EJV”) with an approved social equity backer. Conn. Gen. Stat. § 21a-420u(a) and (g).¹ Pursuant to Conn. Gen. Stat. § 21a-420u(g), in order to be eligible for the reduced fee, the dispensary is required to obtain a provisional license from the Department and then, within fourteen months, satisfy the requirements set forth in Conn. Gen. Stat. § 21a-420g(k).² Among the requirements are approval of the social equity individual backer by the Social Equity Council. Conn. Gen. Stat. § 21a-420u(c).

¹ Section 21a-420u(g) provides as follows: “If a dispensary facility has paid the reduced conversion fee, in accordance with subsection (a) of this section, and did not subsequently create one equity joint venture under this section that, not later than fourteen months after the Department of Consumer Protection approved the dispensary facility’s license conversion application under section 21a-420t, receives a final license from the department, the dispensary facility shall be liable for the full conversion fee of one million dollars established in section 21a-420e minus such paid reduced conversion fee.”

² Pursuant to Conn. Gen. Stat. § 21a-420g(k), “[f]inal license applications shall be submitted on a form and in a manner approved by the commissioner and shall include, but not be limited to, the information set forth in this section, as well as evidence of the following:

- (1) A contract with an entity providing an approved electronic tracking system as set forth in section 21a-421n;
- (2) A right to occupy the location at which the cannabis establishment operation will be located;
- (3) Any necessary local zoning approval for the cannabis establishment operation;
- (4) A labor peace agreement complying with section 21a-421d has been entered into between the cannabis establishment and a bona fide labor organization, as defined in section 21a-421d;
- (5) A certification by the applicant that a project labor agreement complying with section 21a-421e will be entered into by the cannabis establishment prior to construction of any facility to be used in the operation of a cannabis establishment;
- (6) A social equity plan approved by the Council;
- (7) A workforce development plan approved by the Council;
- (8) Written policies for preventing diversion and misuse of cannabis and sales to underage persons; and
- (9) All other security requirements set forth by the department based on the specific license type.

Plaintiff paid the \$500,000 license conversion fee and received approval for the license conversion on or about **April 19, 2023**, thus triggering the fourteen-month period. Cmpl., ¶¶ 35-36. On or about **December 27, 2023**, more than eight months after obtaining its provisional license, Plaintiff submitted an application through the Department's e-license system seeking Social Equity Council (the "Council") approval for its backer. Cmpl., ¶ 45. The Council denied approval on or about April 2, 2024, based on insufficiencies identified in the application. Cmpl., ¶ 48.

Plaintiff submitted a new application to the Department on or about **April 24, 2024**. Cmpl., ¶ 53. Subsequently, the Department inadvertently forwarded the previous backer information to the Council and that application was denied by the Council on **May 7, 2024**. Cmpl., ¶¶ 53-56. After it was notified of its error, the Department and the Council moved quickly to rectify the mistake by agreeing to expedite review of the application. Cmpl., ¶ 68. Unfortunately, a glitch in the Council's disproportionately impacted area ("DIA") map resulted in the social equity backer's address appearing as if it was not contained in a DIA, resulting in the application being denied again. Cmpl., ¶¶ 71-76. The Plaintiff's application was ultimately approved by the Council on August 6, 2024. Cmpl., ¶ 82.

Plaintiff failed to obtain final licensure on or before June 19, 2024, and thereby failed to qualify for a reduced conversion fee under Conn. Gen. Stat. § 21a-420u(g). On June 21, 2024, the Department sent an email to Plaintiff informing it that it had failed to create an EJV that obtained final licensure within the fourteen-month deadline and would therefore be required to pay the balance of the conversion fee of \$500,000. Cmpl., ¶ 85. On June 24, 2024, the Department issued to the Plaintiff an invoice in the

amount of \$500,000. Cmpl., ¶ 97. The Plaintiff subsequently brought this action against the Department on August 5, 2024, relying upon Conn. Gen. Stat. § 4-183.

Plaintiff does not claim in its Complaint that RERACA authorizes it to appeal the Department's issuance of the invoice. As discussed below, there is no authority under RERACA to appeal the Department's actions,³ nor is there any authority for the Department to waive the fee or extend the fourteen-month period. Moreover, Plaintiff admits that RERACA "does not contemplate any exception or extension to the fourteen-month deadline for approval of an EJV following a dispensary's conversion to a hybrid retailer under Conn. Gen. Stat. § 21a-420u(g). Cmpl., ¶ 91. And further, there is no authority under the UAPA to appeal the Department's action as it does not constitute a final decision of a contested case. Simply put, this Court simply lacks jurisdiction to adjudicate Plaintiff's appeal.

The Department clearly made a mistake in forwarding the wrong backer information to the Council. The Department acknowledged that mistake and worked expeditiously to rectify it.⁴ It cannot be ignored, however, that Plaintiff waited more than eight months after it obtained a provisional license to submit an application to the Council for approval of its backer. Given the fourteen-month time period, Plaintiff put itself into a position in which it did not leave room for error.

It should also be noted that regardless of its failure to obtain Council approval, Plaintiff still had not completed all of the *other* necessary steps to obtain a final license

³ Connecticut General Statutes § 42a-420g(j) provides, in part, that "[a] provisional license issued by the department to an applicant on or after July 1, 2023, other than a provisional license issued pursuant to section 21a-420(o), *shall* expire after fourteen months and *shall* not be renewed." (Emphasis added.)

⁴ The Defendants have nothing to do with certifying or interpreting the DIA map, therefore any delays caused by an improper interpretation of the map cannot be attributed to the Defendants.

within the fourteen-month period as required under Conn. Gen. Stat. § 21a-420g(k). Plaintiff states in its Complaint that it “had made significant progress towards completing the steps necessary for final license approval as of April 24, 2024, and could have completed those steps within approximately six weeks or less of SEA [social equity applicant] approval from the Council.” Cmpl., ¶ 65. What Plaintiff did not say, and cannot say, is that as of June 19, 2024, it had completed *all* of the necessary steps except obtaining Council approval.

The Department’s Cannabis Policies and Procedures §§ 21a-421j-7 through 21a-421j-8 set forth in granular detail the security measures required for cannabis establishments. See Exhibit 1, Affidavit of Rodrick Marriott, Director, Drug Control, Department of Consumer Protection, ¶ 10. The Department clearly communicated on its website that:

the entire facility, as it is intended to operate upon final licensure, *must be built and inspected prior to the expiration of the provisional license and meet all minimum requirements for operation as outlined in the Cannabis Policies and Procedures*. The department intends to inspect facilities around 25 percent, 50 percent, 75 percent, and 100 percent build milestones to help registrants avoid unforeseen issues and delays that may arise.

Id., Attachment 1, ¶ 12 (emphasis added).

Plaintiff never requested any inspections prior to June 19, 2024, nor did it request an inspection prior to the date it filed this action. *Id.*, ¶ 16. Therefore, Plaintiff would have been precluded from being approved for a final license pursuant to Conn. Gen. Stat. § 21a-420g(k)(9) even if it had obtained social equity approval from the Council.

II. ARGUMENT

A. Motion to Dismiss Standard

“A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction. . . . When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” *Columbia Air Servs. v. DOT*, 293 Conn. 342, 346-47 (2009) (internal quotation marks omitted). However, the principle that well pleaded facts are construed in a manner most favorable to the pleader does not apply to legal conclusions alleged. *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 326 (2001).

B. Plaintiff Does Not Have a Right to Appeal Under the UAPA

The UAPA does not provide Plaintiff a right to appeal because the Defendants’ action did not constitute a final decision in a contested case. “Under the Uniform Administrative Procedure Act (UAPA), . . . only a final decision in a contested case is appealable to the Superior Court.” *High Water Recovery Ctr., Inc. v. Dep’t of Pub. Health*, 347 Conn. 317, 320 (2023). The UAPA defines a final decision as “the agency determination in a contested case.” Conn. Gen. Stat. § 4-166(5). A contested case is “a proceeding . . . in which the legal rights, duties, or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held . . .” *Id.* § 4-166(4).

The UAPA defines “final decision” as “the agency determination in a *contested case* The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration.” (emphasis added) Conn. Gen. Stat. § 4-166(5); *East Hampton v. Dep’t of Public Health*, 80 Conn. App. 248, 254-55 (2003), cert. denied, 267 Conn. 915 (2004). Section 4-166(4) defines a “contested case” as “a proceeding . . . in which the legal rights, duties or privileges of a party are required by statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held” Conn. Gen. Stat. § 4-166(4).

“The test for determining contested case status [is] . . . well established and requires an inquiry into three criteria, to wit: (1) whether a legal right, duty or privilege is at issue, (2) and is statutorily [or regulatorily] required to be determined by the agency, (3) through an opportunity for hearing or in which a hearing is in fact held.” *High Watch Recovery Center, Inc. v. Dep’t of Public Health*, 347 Conn. 317, 328 (2023). “That is, the UAPA mandates, as a predicate for contested case status, that a party must have enjoyed a statutory right to a hearing.” *East Hampton v. Dep’t of Public Health, supra*, 80 Conn. App. 255. “A hearing is generally defined as a [p]roceeding of relative formality . . . generally public, with definite issues of fact and of law to be tried, in which . . . parties proceeded against have [a] right to be heard. . . . In order for a proceeding to qualify as a ‘hearing’ for the purposes of § 4-166[4], the party must have a statutory or regulatory right to be heard by the agency.” *Ferguson Mech. Co. v. Dep’t of Pub. Works, supra*, 282 Conn. 773.

Section 21a-420u is clear. If the dispensary facility does not create an EJV within fourteen months after the Department approves the facility's license conversion application, the dispensary facility "*shall* be liable for the full conversion fee of one million dollars...." Conn. Gen. Stat. § 21a-420u(g) (emphasis added). The statute does not provide for a hearing and does not provide the Department with any discretion to extend the time period, as Plaintiff acknowledges in its Complaint. Cmpl., ¶ 91. In issuing an invoice, the Department was merely doing what the statute required. Simply put, the Defendants' actions, which were required by law, do not constitute a final decision in a contested case. For this reason alone, there is no subject matter jurisdiction for this appeal. See e.g., *Derwin v. State Employees Retirement Comm'n*, 234 Conn. 411, 424 (1995) ("Because the commission's denial of additional retirement benefits was not a final decision in a contested case, the trial court lacked jurisdiction over the plaintiff's appeal.").

C. RERACA Does Not Provide a Statutory Right to Appeal Under These Circumstances

As Plaintiff acknowledged, RERACA does not provide a right to an appeal in this circumstance. "There is no absolute right of appeal to the courts from a decision of an administrative agency ... Appeals to the courts from administrative agencies exist only under statutory authority ... Appellate jurisdiction is derived from the ... statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed." (Internal quotation marks omitted.) *High Watch Recovery Ctr., supra*, at 328.

The legislature made clear in RERACA when parties have a right to appeal to the superior court in accordance with the UAPA.⁵ The instant circumstance is clearly not one of them. In fact, in the same subsection of Conn. Gen. Stat. § 21a-420g that requires provisional licensees to obtain a final license within fourteen months, the statute specifically provides applicants for a provisional license a right to an appeal the Department's decision not to award a provisional license.⁶ Conn. Gen. Stat. § 21-420g(j). It is axiomatic that where the context of a statute demonstrates that the legislature knew how to convey its intent expressly, the failure to do so implies that the legislature did not intend to include the absent language. *Mayer v. Historic District Comm'n*, 325 Conn. 765, 777-78 (2017). The fact that the legislature specifically permitted a right to an appeal in one circumstance and not in another—within the same statutory subsection—evinces a clear legislative intent that there is no right to appeal the denial of a final license.

D. Plaintiff's Appeal is Moot for Lack of Justiciability

⁵ Sec. 21a-420g(d)(1) provides a right to appeal after denial of a social equity applicant ("not later than thirty days after an applicant is notified of a denial of a license application under this subsection, *the applicant may appeal such denial to the Superior Court in accordance with section 4-183.*"). (Emphasis added.).

Sec. 21a-420g(g) provides a right to appeal after an applicant is disqualified on basis of the disqualification of a social equity backer ("*not later than thirty days after service of notice upon the applicant of a denial, the applicant may appeal such denial to the Superior Court in accordance with section 4-183.*") (Emphasis added).

Sec. 21a-420g(i) provides a right to appeal after a provisional applicant does not receive a provisional license after the application did not meet the standards set forth or was not completed within sixty days ("*the decision of the department not to award a provisional license shall be final and may be appealed in accordance with section 4-183.*") (Emphasis added).

⁶ "If the provisional license application does not meet the standards set forth in this section or is not completed within sixty days, the applicant shall not receive a provisional license. The decision of the department not to award a provisional license shall be final and may be appealed in accordance with section 4-183." Conn. Gen. Stat. § 21a-420g(j).

Plaintiff's Complaint should also be dismissed on mootness grounds as there is no justiciable issue before the Court. Even if Plaintiff had obtained approval from the Council prior to June 19, 2024, it failed to complete all the required steps for obtaining final approval and would not have been approved for its final license on completely unrelated grounds.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction" *State v. Lester*, 324 Conn. 519, 526 (2017) (internal citations deleted). "Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by the judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . ." *Id.* (internal citations deleted). General Statutes § 21a-420g(k) requires that final license applications be submitted with information documenting that certain requirements have been fulfilled, including evidence that the applicant has complied with all security requirements set forth by the Department. Conn. Gen. Stat. § 21a-420g(k)(9). As set forth in the attached Affidavit, Plaintiff failed to request an inspection of its facility prior to June 19, 2024, for the purpose of allowing the Department to determine whether it met the security requirements set forth in its Policies and Procedures at §§ 21a-421j-7 and 21a-421j-8. Exhibit 1, Affidavit at ¶ 16. Thus, the determination of the controversy at issue in this action will not provide practical relief to the Plaintiff because they have still not been approved by the Defendants pursuant to Conn. Gen. Stat. § 21a-420g(k)(9). Plaintiff

has not set forth any facts in its Complaint that would allow the Court to provide relief for this failure.

Plaintiff's failure to seek an inspection of its security systems and equipment rendered any alleged error by the Department irrelevant. Plaintiff would not have been able to obtain a final license even if it had obtained Council approval prior to June 19, 2024, because it did not complete the required steps under Conn. Gen. Stat. § 21a-420g(k). Plaintiff's appeal should be dismissed because it does not rise to the level of a justiciable controversy.

E. No Authority Under UAPA for Court to Issue Writ of Mandamus

A writ of mandamus is an extraordinary remedy available in limited circumstances and for limited purposes. *Bloom v. Gershon*, 271 Conn. 96, 106 (2004).

The requirements for the issuance of a writ of mandamus are well settled ... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with the recognized principles of law ... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks ... The writ is only proper when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no specific adequate remedy ... Even satisfaction of this demanding [three-pronged] test does not, however, automatically compel issuance of the requested writ of mandamus ... In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity.

AvalonBay Communities, Inc. v. Sewer Commission, 270 Conn. 409, 416-17 (2004)

(citations and quotation marks omitted).

A writ of mandamus is clearly not proper in the instant action. The Commissioner's duty under Conn. Gen. Stat. § 21a-420u(g) is, indeed, mandatory, but Plaintiff has no legal right to the relief it seeks. On the contrary, the Commissioner's

statutory duty was to charge Plaintiff the full conversion fee of \$1,000,000. Plaintiff is asking the Court to order the Commissioner to perform a duty that he is not statutorily authorized to perform.

Moreover, the UAPA does not appear to grant a court hearing an administrative appeal the authority to issue a writ of mandamus. Under Conn. Gen. Stat. §§ 4-183(j) and 4-183(k), a court may affirm or sustain an appeal, remand to the agency for further proceedings or modify the agency decision. Nowhere in the UAPA does it grant courts the authority to issue the extraordinary remedy of a writ of mandamus. The overarching issue, however, is that there does not exist a right to an appeal under the UAPA or under any other statute.

CONCLUSION

For the foregoing reasons, this Court lacks subject matter jurisdiction over Plaintiff's appeal. Therefore, the Defendants respectfully requests that the Court grant this motion and dismiss Plaintiff's Complaint in its entirety.

DEFENDANTS

**THE CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION**

and

**THE COMMISSIONER OF THE
CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION, BRYAN
CAFFERELLI (in his official capacity)**

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CERTIFICATION

This is to certify that a copy of the foregoing has been, or immediately will be, served on the following counsel and self-represented parties of record on October 21, 2024.

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EXHIBIT 1

DOCKET NO HHB-CV-24-6088609-S

D&B WELLNESS, LLC,

SUPERIOR COURT

v

J D OF NEW BRITAIN

CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION, and
COMMISSIONER OF THE
CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION BRYAN
CAFFERELLI (in his official capacity)

AT NEW BRITAIN

OCTOBER 21, 2024

AFFIDAVIT

Rodrick Marriott, Director, Department of Consumer Protection Drug Control Division,
does hereby depose and swear

1. I am over eighteen years of age.
2. I believe in the obligations of an oath
- 3 As part of the duties of my employment, I am responsible for the operations of
the Drug Control Division which regulates the Adult-Use Cannabis Program and
the Medical Marijuana Program
4. I have been employed with the Connecticut Department of Consumer Protection
for 16 years.
5. During the course of my duties, I have become acquainted with the following
events of the Plaintiff D&B Wellness, LLC (the "Plaintiff") and subsequent
actions
- 6 The Plaintiff was an original Medical Marijuana Dispensary Facility
(MMDF.0000003) located in Danbury, CT. As part of the Responsible and

Equitable Regulation of Adult-Use Cannabis Act ("RERACA"), Plaintiff was permitted to convert to an Adult-Use Medical Hybrid Retailer with the option to pay a conversion fee of \$1,000,000 or to pay a reduced fee (\$500,000) with the commitment to open at least one but no more than two Equity Joint Venture licenses

7. On September 7, 2022, Plaintiff submitted an application to "Convert to Hybrid License" and submitted the fee of \$500,000 which was received on November 1, 2022.
- 8 Pursuant to RERACA, and specifically Connecticut General Statutes § 21a-420u(g), a conversion applicant has fourteen months after obtaining a provisional license to obtain approval for a final license
- 9 Among the requirements to obtain final licensure within fourteen months is that the applicant must satisfy security requirements as set forth in Connecticut General Statutes § 21a-420g(k)(9)
10. To satisfy the security requirements, an applicant's facility must be built and inspected prior to the expiration of the provisional license, and such facility must meet all minimum requirements for operation to ensure safety compliance of the facility pursuant to the Department of Consumer Protection Regulation of Adult Use Cannabis policies and procedures, specifically §§ 21a-421j-7 through 21a-421j-8. See Attachment 1
- 11 The Connecticut Department of Consumer Protection advises applicants that inquire to request staggered inspections at 25%, 50%, and 75% completeness prior to obtaining its final inspection of the facility during the provisional period.

These additional checkpoints allow the applicant to remain on track to submit for final approval during the fourteen months, so it may then receive final licensure.

12. The Department also communicated to applicants the following through its website:

"...the entire facility, as it is intended to operate upon final licensure, must be built and inspected prior to the expiration of the provisional license and meet all minimum requirements for operation as outlined in the Cannabis Policies and Procedures. The department intends to inspect facilities around 25 percent, 50 percent, 75 percent, and 100 percent build milestones to help registrants avoid unforeseen issues and delays that may arise."

13. A screenshot of the above communication, dated March 20, 2023, is attached hereto as Attachment 2.

14. Plaintiff received its provisional license on April 19, 2023. Accordingly, Plaintiff then had until June 19, 2024, to obtain final licensure.

15. The Connecticut Department of Consumer Protection has no record of Plaintiff requesting its 25%, 50% and 75% milestone inspections, and has no record of Plaintiff requesting its final 100% inspection of its facility prior to June 19, 2024.

16. The Department has no record of Plaintiff requesting a final inspection prior to the date this action was filed.

Further, deponent sayeth not.


Rodrick Marriott

STATE OF CONNECTICUT)
) ss: Hartford
COUNTY OF HARTFORD)

Before me personally appeared, Rodrick Marriott, who made oath to the truth of the allegations in this Affidavit. Subscribed and sworn to before me, this 21st day of October, 2024.

Emily V Perkins

Notary Public

My Commission Expires: 8/31/2027



ATTACHMENT 1

- (3) Inventory any stock of cannabis and obtain samples of any cannabis, labels, containers for cannabis, paraphernalia, and finished or unfinished material.

Section 21a-421j-7. Cannabis Establishment Minimum Security Systems and Equipment Requirements.

- (a) All cannabis establishments that handle or store cannabis on premises shall have a security system to prevent and detect diversion, theft and loss of cannabis utilizing commercial grade equipment, which shall, at a minimum, include:
 - (1) A perimeter alarm;
 - (2) A motion detector, or multiple motion detectors, as necessary to adequately detect unauthorized presence in the establishment;
 - (3) Video surveillance cameras recording at all times and in all areas that may contain cannabis and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance, including night vision in an absence of lighting. The cannabis establishment shall direct cameras at all approved safes, approved vaults, dispensing and sale areas, and any other area where there is cannabis. At entry and exit points, the cannabis establishment shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the establishment and areas where cannabis is stored. Additional video surveillance requirements include:
 - (i) Video surveillance recordings shall be made available for immediate viewing at the direction of the department and shall be retained for at least thirty days. If a cannabis establishment is aware of a pending criminal, civil or administrative investigation or legal proceeding for which a recording may contain relevant information, the cannabis establishment shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the cannabis establishment that it is not necessary to retain the recording; and
 - (ii) All video surveillance recording shall (1) be equipped with the ability to immediately produce a clear color still image that is a minimum of 9600 dpi from any camera image (live or recorded) with the date and timestamp, synchronized and set correctly, embedded on all recordings in such a way as to not materially obscure the picture, and (2) allow for the exportation of still images in an industry standard image format, which may include.png,.jpg,.bmp, and.gif. Exported video shall have the ability to be saved in an industry standard file format that can be played on a standard computer operating system, and archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. A cannabis establishment shall erase all recordings prior to

disposal or sale of the establishment except for any recording retained in accordance with subsection (a)(3)(i) of this section.

- (4) A duress alarm with a silent security alarm system signal generated by the entry of a designated code into an arming station in order to signal that the alarm user is being forced to turn off the system;
 - (5) A panic alarm with an audible security alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring a law enforcement response;
 - (6) A holdup alarm with a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress;
 - (7) An automatic dialer, which for purposes of this subdivision means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message to, or alerting a monitoring call center which then contacts, when activated, over a telephone line, radio or other communication system, a local law enforcement, public safety or emergency services agency requesting dispatch;
 - (8) A failure notification system that provides an audible, text or visual notification of any failure in the security system. The failure notification system shall provide an alert to the cannabis establishment, and at least one key employee thereof, within five minutes of the failure, either by telephone, email, or text message;
 - (9) The ability to remain operational during a power outage; and
 - (10) A back-up alarm system that shall detect unauthorized entry during times when no employees are present at the establishment and that shall be provided by a company supplying commercial grade equipment, other than the company supplying the primary security system.
- (b) In addition to the security and equipment requirements set forth in subsection (a) of this section, producers, cultivators and micro-cultivators that maintain an outdoor grow shall maintain additional security and operational requirements for such operations to ensure access is limited to authorized persons. Such additional requirements shall include:
- (1) A fence surrounding the perimeter of the outdoor operation that is not less than twelve feet in height, constructed of nine gauge or lower metal chain link, or similarly secure material approved by the department, and screened in a way to fully obscure the view from outside of the fenced area;
 - (2) All points of ingress and egress shall (i) be illuminated by at least a twenty-foot radius of lighting, which shall be continuously lit or activated by motion sensor, (ii) have video surveillance that captures at least a twenty-foot radius from the point of ingress or egress, and (iii) be secured by commercial-grade locks; and

- (3) All lighting shall be shielded and downward casting to limit outward light-emittance.
- (c) A cannabis establishment shall keep all security equipment in good-working order and test such equipment every six months . A cannabis establishment shall maintain a log of all equipment testing and the dates thereof.
- (d) A cannabis establishment shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction and alteration, and limit access to persons that are essential to surveillance operations, law enforcement agencies, security system service employees, the department and others approved by the commissioner. A cannabis establishment shall maintain a current list of authorized employees and service personnel that have access to the surveillance room. A cannabis establishment shall keep all on-site surveillance rooms locked and shall not use such rooms for any other function.
- (e) The department may waive, in writing, a specific security requirement set forth in this section or Section 21a-421j-8 of these Policies and Procedures, if a cannabis establishment submits a request for exception, in writing, which request (i) proposes other safeguards determined by the department to be an adequate substitute by ensuring equal or greater protection of public health and safety, and (ii) shall be approved or denied in the department's discretion based on the potential for product diversion, theft, criminal activity, or an adverse impact on safety.
- (f) The department may require additional safeguards and security measures for the purpose of protecting public health and safety, including, but not limited to, a supervised watchperson service, if a cannabis establishment presents special security issues, such as an inventory of cannabis that exceeds the amount permitted under subsection (a)(1) of section 21a-421j-8 of these Policies and Procedures, exposed handling of cannabis or unusual vulnerability to diversion, theft or loss, or reasonable suspicion of criminal activity on or around the establishment or premises.

Section 21a-421j-8. Cannabis Establishment Minimum Security Procedures.

- (a) A cannabis establishment shall:
 - (1) Not produce, manufacture or maintain cannabis in excess of the quantity required for normal, efficient operation;
 - (2) Store all cannabis in an approved safe or approved vault, and in such a manner as to prevent diversion, theft, loss, adulteration or access by unauthorized persons, provided that a hybrid retailer, retailer or dispensary facility may store a reasonable daily amount of cannabis in a securely locked cabinet or drawer during hours of operation;
 - (3) Securely lock any cannabis undergoing a production or manufacturing process that cannot be completed before the end of a business day, inside an area that affords adequate security,

provided that if a delivery service or transporter is unable to deliver cannabis, the delivery service or transporter shall return the cannabis in accordance with section 21a-421j-39(j).

- (4) Maintain all cannabis in a secure area or location within the establishment accessible only to specifically authorized employees, which shall include only the minimum number of employees essential for efficient operation;
 - (5) Keep all approved safes, approved vaults, cabinets and drawers, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing or storage of cannabis, securely locked or protected from entry, except for the actual time required to remove or replace cannabis;
 - (6) Keep all locks and security equipment in good working order;
 - (7) Provide keys, including electronic keys and key cards, or assign unique security measures, such as combination numbers, passwords or electronic or biometric security systems only to specifically authorized employees as necessary for normal, efficient operation, and maintain a log of all key holders, as well as the security measures and the assigned employee;
 - (8) Collect keys from and deactivate unique security measures assigned to an employee at the time such employee ceases to be an employee of the licensee, is suspended, or ceases to have authorization to possess such keys or unique security measures.
 - (9) Not allow keys, or other security measures to be accessible to persons other than the specifically authorized employee to which they are assigned; and
 - (10) Post a sign at all points of access to any area containing cannabis, including a room with an approved safe or approved vault, which sign shall be a minimum of twelve inches in height and twelve inches in width which shall state: "Do Not Enter – Access Limited to Authorized Employees Only" in lettering no smaller than one inch in height.
 - (11) If a retailer, hybrid retailer, dispensary facility, or micro-cultivator, maintain a secure cannabis return location for undeliverable cannabis that (i) is accessible from the exterior of the establishment in a manner that secures the cannabis inside of the establishment in a locked container located in a restricted area once deposited, (ii) is accessible for the deposit of undeliverable cannabis at all times, (iii) is only accessible from the interior of the establishment by key employees, and (iv) safeguards its contents and the quality thereof.
- (b) A producer, cultivator, micro-cultivator, product manufacturer, food and beverage manufacturer and packager shall maintain a log of each instance of an employee accessing a restricted area in which unpackaged cannabis is stored.
 - (c) A cannabis establishment shall keep its establishment securely locked and protected from entry by unauthorized persons at all times, and maintain all phases of cannabis production in a manner not visible from a public place without the use of optical aids, such as binoculars and aerial vehicles.

- (d) Any cannabis stored not in compliance with section 21a-420 of the Connecticut General Statutes and sections 21a-421j-1 to 21a-421j-41, inclusive, of these Policies and Procedures, or at a location other than the establishment for which the license was issued, shall be subject to embargo or seizure by the department in accordance with section 21a-96 of the Connecticut General Statutes.
- (e) Except as provided in section 21a-421j-9 of these Policies and Procedures, no person shall be allowed access to any restricted area within an establishment containing cannabis, other than members of the department and law enforcement in performance of governmental duties, and cannabis testing laboratory employees and employees of the establishment whose responsibilities necessitate access to the area containing cannabis, and then for only as long as necessary to perform the such duties and responsibilities.

Section 21a-421j-9. Cannabis Establishment Visitors.

- (a) No person other than an authorized employee shall be allowed inside of a cannabis establishment, other than (1) public areas of a hybrid retailer or retailer, (2) qualifying patients and caregivers in unrestricted areas of a dispensary facility, and (3) visitors pursuant to subsection (b), provided that nothing herein shall prohibit a mother, father or legal guardian from bringing into the workplace their child under 12 months of age. For purposes hereof, a landlord of a cannabis establishment that is not also an employee thereof shall only be permitted to enter restricted areas of such cannabis establishment in accordance with this section, and such restriction shall be reflected in the lease, rental agreement, or other contract between the landlord and the cannabis establishment.
- (b) Unless otherwise prohibited by the commissioner as provided in subsection (d) of this section, a cannabis establishment may allow visitors to enter restricted areas of their establishment in accordance with the following procedures:
 - (1) All visitors shall be listed on a visitor log, including the name and company affiliation of all proposed visitors, as well as the date, time, and purpose of the visit, which log shall be submitted to the department at least twenty-four hours in advance of any visit;
 - (2) All visitors shall obtain and carry a visitor identification badge from the cannabis establishment prior to or at the time of entering;
 - (3) All visitors shall be escorted and monitored by an employee; and
 - (4) All visitors shall visibly display the visitor identification badge and return it to an authorized employee upon exiting the premises.
- (c) If an emergency requires the presence of a visitor and makes it impractical for the cannabis establishment to include such visitor on a proposed visitor log at least twenty-four hours in advance, the cannabis establishment shall provide written notice to the commissioner as soon as practicable, but no later than twelve hours after the onset of the emergency. Such notice

ATTACHMENT 2

GOVERNMENT

What can we help you find?

GOVERNMENT

SHARE



Is the entire facility buildout and inspection required for the final license before the expiration of the provisional license?

Date: March 20, 2023

Read time: < 1 minutes

Yes The entire facility, as it is intended to operate upon final licensure, must be built and inspected prior to the expiration of the provisional license and meet all minimum requirements for operation as outlined in the department's policies and procedures. The department intends to inspect facilities around 25 percent, 50 percent, 75 percent, and 100 percent build milestones to help registrants avoid unforeseen issues and delays that may arise

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