Back to the Drawing Board for Charlotte's Web

In late September, several parties joined to challenge the rules which the Florida Department of Health had proposed to implement § 381.986, Florida Statutes (otherwise known as the "Charlotte's Web" law). The challenge claimed that the Department's rules demonstrated an invalid exercise of the Department's delegated legislative authority. Administrative Law Judge W. David Watkins agreed with the challengers' position and last Friday threw-out many of the Department's rules. Now, the Department will have to issue a notice of rule change and hope that a new set of rules do not attract a new challenge.

In many respects, it is still unclear what exactly the new rules will look like; however, two changes in particular are expected. First, the Department will likely create a merit-based system to choose which applicants to award licenses. Originally, the Department's rules contemplated a lottery system in which applicants that met certain threshold requirements would be chosen at random. The Department's reasoning behind the lottery was primarily that a lottery would be fair and therefore less subject to a challenge by a losing applicant. Opponents argued, and the Judge agreed, that the lottery was counter to the spirit of § 381.986, which in so many words directs the Department to award licenses to the *best* applicants.

Second, the Department will require applicant-entities to be qualified nurseries as defined in § 381.986 - not entities that merely *include* a qualified nursery. The Department originally took a loose reading of § 381.986 to allow for a greater ownership role by outside groups with knowledge of growing and selling low-THC cannabis. Again, Judge Watkins agreed with the challengers and ruled that such a loose interpretation of the law was impermissible. Applicant-entities will have to be the actual nursery entity.

Other than the above two areas, the precise approach the Department takes on the new rules remains to be seen. However, even more unclear than the Department's approach, is *when* new rules will actually be implemented. With the holiday season approaching and the ever-existing threat of another challenge, the Department is likely hoping to at least have the process finished by the 2015 legislative session in March. If it doesn't, changes in the law are always a possibility. Either way, we will be sure to keep you posted.

Judge Watkins' final order can be found at https://www.doah.state.fl.us/ROS/2014/14004296.pdf. *Other notable rules that the Judge found invalid included the following:*

- *rules relating to financial requirements for applicants;*
- *rules relating to certain timing constraints once an applicant is approved for a license;*
- *rules relating to the inspection of a license-holder's grow facility; and*
- *rules relating to the background of the owners of an applicant-entity.*

**The above article assumes the reader has a basic understanding of the fundamental legal and regulatory landscape that currently exists related to medical marijuana in Florida. For helpful background information, please refer to our previous articles on the topic, which can be found at http://www.ioppololawgroup.com/insider-updates/.*

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The Ioppolo Law Group, PLLC ("ILG") has been representing both Florida-based and national groups in their pursuance of medical marijuana licenses for the past year. ILG's representation ranges from regulatory compliance, government affairs and business consulting to creating corporate and financial structures and building teams. Please do not hesitate to contact us at 407 936 3672 or alukis@ioppololawgroup.com for a consultation. Also, please feel free to visit our website at www.ioppololawgroup.com to explore our medical marijuana resource page and to sign up to receive our alerts.

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