

DEPARTMENT OF HEALTH  
STATE OF FLORIDA

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GEORGE HACKNEY, INC.  
d/b/a TRULIEVE,

Petitioner,

vs.

Case No. \_\_\_\_\_

FLORIDA DEPARTMENT OF HEALTH,

Respondent.  
\_\_\_\_\_ /

**PETITION FOR DECLARATORY STATEMENT  
BEFORE THE DEPARTMENT OF HEALTH**

Petitioner, George Hackney, Inc., d/b/a Trulieve, requests a declaratory statement before the Department of Health under Fla. Stat. § 120.565, and says:

1. George Hackney, Inc., d/b/a Trulieve (hereafter Trulieve), is a Florida corporation with its principal place of business in Gadsden County, Florida. For purposes of this proceeding, its address is in care of its undersigned counsel. Trulieve is a substantially affected person as described herein.

2. The Department of Health (DOH), located at 4052 Bald Cypress Way Bin A-02, Tallahassee FL 32399, regulates medical marijuana production, sale and use under the Medical Marijuana Amendment, Fla. Const. Art. X § 29 and Fla. Stat. § 381.986.

3. DOH approved Trulieve's application to be licensed as a medical marijuana treatment center (MMTC), to supply medical marijuana and marijuana delivery devices to persons who qualify to purchase and use these products.

4. Fla. Stat. § 381.986(1)(j) defines "medical use" to allow vaping products containing marijuana flower in a sealed, tamper-proof receptacle.

5. Trulieve requests a declaratory statement recognizing its license right to sell and dispense (a) ground marijuana flower vapable products in ceramic vaporizer cups; and (b) Volcano vaporizers, together with a base and sleeve that fits the vaporizer cup into the vaporizer, for use by qualified patients, pursuant to a license application deemed approved by default.

6. On July 18, 2017, Trulieve submitted an application seeking DOH's approval to sell and dispense ground marijuana flower vaporizing products in pre-filled ceramic vaporizer cups sealed with a stainless seal top; and Volcano Vaporizers, along with metal sleeves and bases that fit the Volcano Vaporizer. The vaporizer cup can thus be used with the Volcano Vaporizer, although vaporizer cups can also be sold and dispensed without a vaporizer, which can be legitimately acquired for other uses from other sources.

7. The patient's physician determines the proper route to administer medical marijuana for the patient. Many Trulieve patients have orders that qualify them for inhaling (vaping) medical marijuana.

8. Physician orders that allow medical marijuana inhalation necessarily allow patients to use a vaporizer as a marijuana delivery device. However, physicians' orders do not usually specify any particular brand or source of vaporizer.

9. In the vaping process, the patient uses a vaporizer to heat the product container and plant materials to a specific temperature. Water from the plant materials containing active compounds steams off to produce a medicinal vapor or aerosol that is captured and inhaled. The vaporizer can be used to efficiently convert solid cannabis compounds to aerosol for inhaling. Vaping differs from smoking, in which a burning substance produces smoke that is inhaled.

10. Trulieve submitted its application in both full and redacted versions on July 18, 2017. Trulieve also provided DOH pictures of the vaporizer cup and a prototype vaporizer cup.

11. The application seeks “licenses” as defined in Fla. Stat. § 120.52(10). DOH did not ask Trulieve for more information regarding this application within 30 days, so the application is deemed complete upon submission. Fla. Stat. § 120.60(1).

12. DOH had 90 days from the date the complete application was submitted, until October 16, 2017, to act on the application (to formally grant or deny the application, or grant the application with conditions). DOH did not act on the application within the time allowed.

13. Trulieve’s application is thus approved by default under Fla. Stat. § 120.60(1).

14. On October 9, 2017, Trulieve submitted a second application for approval of a different vaporizer device. This application states that it “does not seek to amend or replace the amendment submitted to the Department on July 18th, but is instead an additional vaporizer....”

15. When DOH did not respond to the July 18 application within the 90 day allowed period, Trulieve sought to informally resolve the matter with DOH. However, DOH has now informally declined to recognize the statutorily deemed approval of the July 18 application, and instead issued a letter dated November 7, 2017, stating that it considered the October 9 application to be an amendment to the July 18 application, as a reason to excuse its inaction on the July 18 application and extend the time for taking action. This is contrary to the expressly stated intent of the applications and contrary to Fla. Stat. § 120.60(1).

16. DOH has no basis to further delay or deny the July 18, 2017 application, which will enable qualified patients to obtain the benefits of vapable medical marijuana when determined appropriate by the patient’s physician.

17. Trulieve is entitled to a declaratory statement that applies Fla. Stat. § 120.60(1) to recognize its unconditional license rights to separately and independently sell and dispense (a) vapable ground marijuana flower products in ceramic vaporizer cups; and (b) Volcano

Vaporizers, together with bases and sleeves, to qualified patients and their caregivers, as set forth in the approved application submitted July 18, 2017.

18. Prompt action on this petition is requested in order to begin supplying qualified patients with the products they need and have the right to obtain.

Respectfully submitted this 8th day of November, 2017.

*s/ David K. Miller*  
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**Attorneys for Trulieve**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing **Petition for Declaratory Statement Before the Department of Health** has been hand-delivered to Shannon Revels, Agency Clerk, Office of the General Counsel, Florida Department of Health, 2585 Merchants Row Blvd., Suite 110, Tallahassee, FL 32399; and a true and correct copy has been served by E-Mail on the parties listed below, this 8th day of November, 2017.

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*s/ David K. Miller*  
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Attorney