

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
OFFICE OF MEDICAL MARIJUANA USE**

In Re: Petition for Declaratory Statement

GEORGE HACKNEY INC. d/b/a TRULIEVE

Case No.: _____

Petitioner
_____ /

DFMMJ INVESTMENTS, LLC’S MOTION TO INTERVENE

Pursuant to rule 28-105.0027, Florida Administrative Code, DFMMJ Investments, LLC (“DFMMJ”) files this Motion to Intervene in the above proceeding and states as follows:

1. DFMMJ is a Florida limited liability company with its principal place of business in Alachua County, Florida. For purposes of this proceeding, DFMMJ’s address is that of its undersigned attorneys.

2. On November 8, 2017, George Hackney, Inc. d/b/a Trulieve (“Petitioner”), a licensed medical marijuana treatment center (“MMTC”), filed a Petition for Declaratory Statement (the “Petition”) seeking a declaration from the Department of Health (the “Department”) regarding whether Petitioner has a “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[.]” Petition for Declaratory Statement at ¶5.

3. The Petition was published in the Florida Administrative Register on November 20, 2017. A motion to intervene must be filed within 21 days of the date of publication. Rule 28.105.0027(1), F.A.C. This Motion is, therefore, timely.

4. Any person whose substantial interests will be affected by a declaratory statement may intervene in the proceeding. Rule 28-105.0027(1) & (2)(c), F.A.C.

5. A person's substantial interests are affected when: 1) the person will suffer injury in fact of sufficient immediacy; and 2) the injury is of a type or nature which the proceeding is designed to protect. *Agrico Chem. Co. v. Dep't of Env'tl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The first prong deals with the degree of injury and the second prong deals with the nature of the injury. *Id.*

6. DFMMJ's substantial interests will be affected by this proceeding. DFMMJ is one of thirteen licensed MMTCs in Florida. As licensed MMTCs, SFMMJ and its competitors are authorized to cultivate, process, transport, and dispense marijuana for medical use. §381.986(8)(e), Fla. Stat. DFMMJ currently dispenses marijuana to qualified patients for medical use.

7. "Medical use" is defined in section 381.986(1)(j), Florida Statutes, in part as follows:

"Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

2. Possession, use, or administration of marijuana in a form for smoking, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping.

(Emphasis added)

8. The question presented in the the Petition is whether the Petitioner can sell and dispense vapable ground marijuana flower and associated marijuana delivery devices used for

vaporizing the ground marijuana flower. In essence, the Petitioner is asking if its vapable ground marijuana flower products fall within the definition of “medical use”.¹

9. The Department’s answer to the question presented in the Petition will directly and immediately impact DFMMJ’s interests by affecting the products which can be sold and dispensed to qualified patients in Florida. This impact is an injury in fact because the Department’s determination will affect DFMMJ’s production processes, product line, and sales. The injury in fact is immediate because the impact to DFMMJ’s interests is not dependent upon any intervening factors. If the Petition is granted, the products identified in the Petition can immediately be sold and dispensed in Florida. Thus, DFMMJ meets the first prong of the *Agrico* test. *See Boca Raton Mausoleum, Inc. v. Dep’t of Banking and Finance, Div. of Finance*, 511 So. 2d 1060, 1063 (Fla. 1st DCA 1987) (An injury is of sufficient immediacy when it is the agency’s action itself which will cause the injury.)

10. Under the second prong of the *Agrico* test, DFMMJ’s substantial injury is of the type which this proceeding is designed to protect. The clear purpose of section 381.986 is to establish a robust regulatory framework that governs the cultivation, processing, transportation, and dispensing of medical marijuana and marijuana delivery devices. As noted above, the statute explicitly regulates the forms of marijuana that may be possessed, used, or administered. §381.986(1)(j)2., Fla. Stat. It also establishes requirements for the processing and dispensing of marijuana by MMTCs. §381.986(8)(e)9. - 13., Fla. Stat. Additionally, an MMTC that violates

¹ Although the Petitioner has framed the issue as whether, pursuant to section 120.60(1), Florida Statutes, it has a license to dispense the vapable marijuana flower products and delivery devices described in the Petition, the actual issue in this proceeding is whether section 381.986 authorizes the Petitioner to dispense the products described in the Petition. The Department is not charged with enforcing chapter 120, Florida Statutes. Thus, the Department cannot issue a declaratory statement as to applicability of section 120.60(1) to the Petitioner’s circumstances. *See Citizen of State ex rel. Office of Public Counsel v. Florida Public Ser. Com’n and Utilities, Inc*, 164 So. 3d 58, 59 (Fla. 1st DCA 2015) (“The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes, rules, or orders which an administrative agency enforces, adopts or enters.”)

any provision of section 381.986 is subject to revocation of its license. §381.986(10)(g), Fla. Stat. These provisions create a zone of interests which includes the impact the Department's decision in this proceeding will have on the ability of licensed MMTCs to lawfully process and dispense marijuana to qualified patients.

11. Further, section 381.986 also includes a limitation on the number of MMTC licenses that may be issued by the Department. This limitation established by the Legislature ensures reasonable statewide availability of marijuana to qualified patients, while also prohibiting the proliferation of MMTC facilities in Florida. §381.986(8)(a), Fla. Stat. This limitation on the number of licenses creates a zone of interests which considers the impact the introduction of new products into the highly-competitive and tightly-regulated medical marijuana industry will have on existing MMTCs. *See Boca Raton Mausoleum*, 511 So. 2d at 1064-1066. As DFMMJ's injury falls within the zone of interests which section 381.986 is designed to protect, DFMMJ meets the second prong of *Agrico*.

12. For the reasons stated, DFMMJ has standing to intervene in this proceeding.

13. On the date of filing this motion, the undersigned attempted to contact Petitioner's counsel to state whether the Petitioner objects to this motion. However, the Petitioner's counsel was out of the office for the remainder of the day.

WHEREFORE, DFMMJ respectfully requests the Department grant this Motion to Intervene and enter an order granting DFMMJ party status in this proceeding.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

Respectfully submitted this 4th day of December 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Intervene has been provided to the following via electronic mail on this 4th day of December 2017:

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