



CLERK OF THE COURT

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7 DISTRICT COURT  
CLARK COUNTY, NEVADA  
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9 NEVADA MEDICAL MARIJUANA )  
DISPENSARY, INC.;GB SCIENCES NEVADA )  
10 LLC; NEVADA HOLISTIC MEDICINE LLC; )  
FIDELIS HOLDINGS, LLC: and DESERT INN )  
11 ENTERPRISES INC., )

12 Plaintiffs/Petitioners, )

13 vs. )

14 STATE OF NEVADA, DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )  
15 DIVISION OF PUBLIC AND BEHAVIORAL )  
HEALTH; et. al. )  
16

17 Defendants/Respondents )

Case No.: A-14-710488-C  
Dept. No.: XXV

18 **STATE RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION**

19 Date of Hearing: December 12, 2014

20 Time of Hearing: 10:00 a.m.

21 COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF  
22 HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
23 (hereinafter "DIVISION"), by and through CATHERINE CORTEZ MASTO, Attorney General by  
24 Chief Deputy Attorney General, LINDA C. ANDERSON, and files this Response to the Motion for  
25 Preliminary Injunction on Order Shortening Time filed on December 3, 2014.

26 The Division of Public and Behavioral Health of the Department of Health and Human Services  
27 has the statutory authority to register medical marijuana establishments. The Division does not  
28 "license" the establishments and instead issues certificates of registration pursuant to NRS 453A.322.

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1 The Nevada Legislature specified that the Division could accept applications once a calendar year for a  
2 ten day period as described in NRS 453.324(4). The registration of dispensaries was a competitive  
3 process because Clark County was limited to forty (40) dispensaries with the Clark County Commission  
4 allocating eighteen (18) to unincorporated Clark County pursuant to NRS 453A.324 and NRS  
5 453A.326. The Division scored and ranked the applications according to the considerations set forth in  
6 NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process  
7 by the Division. Because NRS 453A.700(1)(a) provides that the Division shall maintain the  
8 confidentiality of "the contents of any applications, records, or other written documentation that the  
9 Division or its designee creates or receives pursuant to the provisions of this chapter [NRS 453A]," the  
10 Division shall not disclose any contents of an application unless ordered to do so by this Court.  
11 Otherwise the Division will rely on the documents presented to the Court by the other parties in this  
12 matter in order to respond.

13 The Division agrees that a complaint for declaratory and injunctive relief is appropriate for  
14 Plaintiffs to challenge the process of the Division in registering dispensaries in unincorporated Clark  
15 County. Although "registration" is included in the definition of license under NRS 233B.034 for  
16 purposes of NRS 233B.127, the Nevada Legislature made clear that they did not intend to provide for  
17 notice and opportunity for hearing prior to a denial or revocation of a registration. NRS 453A.320  
18 provides the following:

19 The purpose for registering medical marijuana establishments and medical marijuana  
20 establishment agents is to protect the public health and safety and the general welfare of  
21 the people of this State. Any medical marijuana establishment registration certificate  
22 issued pursuant to NRS 453A.322 and any medical marijuana establishment agent  
23 registration card issued pursuant to NRS 453A.332 is a revocable privilege and the  
24 holder of such a certificate or card, as applicable, does not acquire thereby any vested  
25 right.

26 The Nevada Legislature provided that this "revocable privilege" does not implicate any property rights  
27 for due process concerns. Therefore, neither the Legislature nor the Division created any administrative  
28 hearing process to appeal a denial or a revocation of a registration.

29 Although the application form for a medical marijuana itself as described in NRS  
30 453A.322(3)(a)(2) did not include evidence of approval by the local authority of compliance with

31 ...

1 zoning restrictions, the Nevada Legislature required that the applicant submit to the Division the  
2 following in NRS 453A.322(3)(a)(5):

3 If the city, town or county in which the proposed medical marijuana establishment will  
4 be located has enacted zoning restrictions, proof of licensure with the applicable local  
5 governmental authority or a letter from the applicable local governmental authority  
6 certifying that the proposed medical marijuana establishment is in compliance with those  
7 restrictions and satisfies all applicable building requirements

6 Therefore, any applicant was on notice that they needed to submit authorization from the local  
7 governmental authority to the Division or the application could be disqualified. The scoring and  
8 ranking by the Division focused on the criteria set forth by the Nevada Legislature in NRS 453A.328  
9 rather than zoning issues which would remain in the realm of the local authority.

10 The Division does not dispute that they issued registrations to applicants who did not comply  
11 with NRS 453A.322(3)(a)(5) and denied registrants who had been issued a special permit from Clark  
12 County. The Division did not disqualify those establishments listed as Defendants in this matter during  
13 the application process and issued a registration certificate which is currently provisional under NRS  
14 453A.326(3). The Division retains the ability to immediately revoke the registration pursuant to NRS  
15 453A.340(3) and NAC 453A.332(a) and (b) if those establishments cannot demonstrate compliance  
16 with the statutory requirements for the location of the facility. If the Division revokes the registration,  
17 there will be vacant slots for dispensaries in unincorporated Clark County under the current allocation.  
18 The Nevada Legislature did not address these circumstances or process if the Division failed to properly  
19 disqualify an applicant within the 90 day timeframe for review or if a registrant did not have local  
20 approval.

21 Absent action by either this Court or the Nevada Legislature, the Division will open up a new  
22 application period in the calendar year 2015 and consider new applications for dispensaries. The  
23 Nevada Legislature only authorized the Division to issue registration certificates “not later than 90 days  
24 after receiving an application to operate a medical marijuana establishment “ as set forth in NRS  
25 453A.322(3). Without Court intervention, the Division does not have statutory legal authority to  
26 advance the applicants who had the requisite approval of the local authority after completion of the  
27 scoring by the Division after the 90 day period which has already run.

28 . . .

1 Although Division employees made representations in the past that indicated that the Division  
2 would move forward the next ranked applicant in the event that a registrant was not approved by the  
3 local authority, the Division cannot waive the statutory time frame of 90 days and alter its authority to  
4 issue registrations. While advancing the next ranked applicant would have provided an expedited  
5 approach to meet the needs of the community, it was not an option that the Nevada Legislature provided  
6 to the Division. The Division notes that it was not aware that any other entity changed its conduct in  
7 reliance on those representations.

8 Again, no property interest exists for any plaintiff or defendant and no dispensary is currently  
9 operating in Nevada at this time. Any establishment could be subject to challenge if the Division issued  
10 an additional registration after the 90 day period had run without an order from a court or specific  
11 authorization to do so by the Nevada Legislature. In order to promote stability to best meet the needs of  
12 the community, the Division respectfully requests this Court to resolve this dispute as to which entities  
13 are entitled to registration at this time.

#### 14 CONCLUSION

15 Unless otherwise directed by this Court or the Nevada Legislature, the Division plans to  
16 determine if any registrations should be revoked and then accept new applications next calendar year to  
17 ensure the issuance of the dispensary registrations for any vacant slots. The Division will improve the  
18 process to ensure that all applicants submit applicable approval of local authority as set forth in NRS  
19 453A.322(3)(a)(5) before issuing registration. However, the Division will also abide by any  
20 determination of this Court and issue registrations as ordered.

#### 21 **AFFIRMATION PURSUANT TO NRS 239B.030**

22 The undersigned does hereby affirm that the preceding document does not contain the social  
23 security number of any person.

24 Dated: December 9, 2014

25 CATHERINE CORTEZ MASTO  
26 Attorney General

27 By: /s/ Linda C. Anderson  
28 Linda C. Anderson  
Chief Deputy Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing *STATE RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION* by using the electronic filing system on the 9<sup>th</sup> day of December, 2014.

The Following participants in this case are registered electronic filing system users and will be served electronically:

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