

**BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**FILED**  
December 30, 2019  
ADMINISTRATIVE  
HEARING COMMISSION

**GREEN PRECISION ANALYTICS INC.,**

Petitioner,

v,

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

**DEPARTMENT OF HEALTH AND  
SENIOR SERVICES,**

Respondent.

**VERIFIED COMPLAINT**

Petitioner Green Precision Analytics Inc. ("GPA") states:

1. GPA appeals the Department of Health and Senior Services' (the "Department") denial of its medical marijuana testing application.
2. Under Article XIV, Section 1, subsection 3(23) of the Missouri Constitution, "[t]he denial of a license, license renewal, or identification card by the Department shall be appealable to the Administrative Hearing Commission, or its successor entity."
3. This Complaint is timely under 19 CSR 30-95.025(6)(B) in that it was filed within thirty (30) days of the date the Department's decision was sent to GPA.
4. GPA is a Missouri corporation.
5. GPA applied for one medical marijuana testing license (Application No. 8151).
6. GPA submitted its application on August 14, 2019.

7. On August 29, 2019, GPA received notification from the Department that its application had been rejected as incomplete (the "Rejection Notice," attached hereto as Exhibit 1).

8. The Rejection Notice listed two reasons for rejection: "Ownership Structure," and "Worksheet(s)."

9. The "Ownership Structure" section of the Rejection Notice was a form communication sent to all applicants perceived by the Department to have errors in the Ownership Structure Form or Written Description and/or Visual Representation portions of their applications.

10. The "Worksheet(s)" section of the Rejection Notice was also a form communication, and was sent to applicants perceived to have errors in their Worksheets or Worksheet Attachments, however, unbeknownst to GPA, this section of the letter was included in all rejection notices regardless of whether the Department discovered an actual error in a Worksheet or Worksheet Attachment.

11. Pursuant to its own regulations, the Department's rejection notices were required to "specify" what information was missing from the application:

**Applications will be considered complete if they include all information required for applications by this rule and by 19 CSR 30-95.025(4). The department will notify an applicant if an application is incomplete and will specify in that notification what information is missing.**

19 CSR 30-95.040(1)(B)4 (emphasis added).

12. The Department's Rejection Notice to GPA failed to specify what information was missing in violation of 19 CSR 30-95.040(1)(B)4.

13. The Rejection Notice also stated: "Any applications with information missing upon the department's second review, as required by 19 CSR 30.95.040 and 19 CSR 30-95.025 (4), will be considered incomplete and must be denied."

14. Contrary to the Rejection Notice, the Department did not in fact deny applications due solely to errors in Worksheets and Worksheet Attachments.

15. On the morning of August 30, 2019, GPA representative Josh Kollmeyer called the Department's medical marijuana help line seeking additional information on the reasons for the rejection.

16. Mr. Kollmeyer was told to submit his questions via email, which he did the same morning. Mr. Kollmeyer's email requested clarification on the reasons for the rejection (see **Exhibit 2**).

17. The Department responded via email stating that it was unable to provide additional information, in part to maintain "consistent and unbiased review" of applications (see **Exhibit 3**).

18. GPA spent the majority of the next several days reviewing its voluminous Worksheets and attachments to determine what errors may have prompted the Department to include that section of the Rejection Notice.

19. In response to the incomplete "Ownership Structure" aspect of the Rejection Notice, GPA prepared and submitted an Ownership Description table (see **Exhibit 4**) to accompany its Ownership Structure forms (see **Exhibit 5**).

20. GPA resubmitted its application on September 4, 2019.

21. On December 19, 2019, GPA received notification from the Department that its testing application had been denied "for failure to meet the criteria of the following section(s) of Title 19 of the Missouri Code of State Regulations: 19 CSR 30-95.025(4)(A)2 and 19 CSR 30-95.040(2)(C-D)." (see **Exhibit 6**).

22. The code sections cited in the denial, 19 CSR 30-95.025(4)(A)2 and 19 CSR 30-95.040(C), set forth the requirement that applicants demonstrate fifty-one percent (51%) Missouri ownership.

23. After receiving the denial, GPA discovered for the first time that it had made a clerical error regarding the percentage of its shareholders' voting interests in the Ownership Structure forms and Ownership Description it submitted to the Department.

24. Those documents inadvertently show GPA's four shareholders each having twenty-five percent (25%) voting interest in the corporation, which caused its Missouri residents to have only fifty percent (50%) of the corporation's voting interests (see Exhibits 4 and 5).

25. In actuality, pursuant to GPA's Bylaws, "each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders." (see **Exhibit 7**, at p. GPA000010).

26. Based on the shares issued by GPA (see **Exhibit 7**, at p. GPA000008), the total voting interest of its Missouri residents, like the total economic interest of its Missouri residents, equals fifty-one percent (51%) which satisfies the majority

ownership requirements contained in Article XIV of the Missouri Constitution and the Department's regulations.

27. GPA's Bylaws were formally adopted by its Directors on July 25, 2019 and therefore were in effect when it first submitted its application. (see Exhibit 7, at pp. GPA000002 and GPA000007).

28. GPA's Bylaws have not been amended or changed in any way since their adoption on July 25, 2019.

29. Had the Department fulfilled its obligation under 19 CSR 30-95.040(1)(B)4 to "specify" what information was missing from GPA's application, GPA could have corrected the clerical error in its voting percentages before resubmitting its application.

30. For instance, if the Rejection Notice, like the denial notice, specifically cited the majority ownership regulations, GPA could have identified and corrected the clerical mistake it made regarding its voting percentages.

31. GPA received a Final Score of 1528.10—higher than three other applicants that received testing licenses (see Exhibit 8)— so it would have received a license but for the clerical error in its voting percentages.

32. Moreover, the Department did not in fact provide "consistent and unbiased" review of applications.

33. Although the Department's rejection notices were form driven, the forms evolved over time, and different sections and information were arbitrarily included in rejection notices to applicants.

34. For instance, some applicants received a rejection notice that specifically identified the majority ownership issue: “Documentation submitted (**Persons of Interest, Ownership Structure Form and Ownership Description**) failed to meet the requirement to provide satisfactory evidence of the specified **majority ownership** per CSR30-95.025.1(4) (A) 2 and 19CSR30-95.040(2) (C) and (D).” (see, *e.g.*, **Exhibit 9**, emphasis in original).

35. Had GPA been alerted to the majority ownership issue specifically—as some other applicants were—it could have addressed and corrected that issue specifically.

36. Instead, GPA was provided a form notice that highlighted “delineation” of ownership percentages and other issues inapplicable to its specific application.

37. Based on the Rejection Notice, GPA spent most of its time before resubmission reviewing its Worksheets and Worksheet Attachments for any conceivable errors. GPA did not know that the Worksheets section in the Rejection Notice was included in all rejection notices regardless of whether it applied. GPA also did not know that, contrary to the Rejection Notice, a worksheet error was not itself grounds for denial.

38. To compound matters, the Department released a confusing “Sample Ownership Structure Form” (see **Exhibit 10**) and “Sample Ownership Written Description or Visual Representation” (see **Exhibit 11**) just days before the original submission deadline. These documents contemplated the creation of an arbitrary category of investors (“Out of State Investors”) to insert into the “Business Entity

Name and Tax Number” field in the ownership structure form which is inconsistent and confusing in light of the Department’s instructions and definitions. The Department’s sample forms also show Missouri residents holding their ownership interests in a legal entity (*i.e.*, “GrowMo, Inc.”) when Article XIV of the Missouri Constitution explicitly requires medical marijuana facility licenses to “be held by entities that are majority owned by **natural persons** who have been citizens of the state of Missouri for at least one year . . . .” (emphasis added). These issues, coupled with the inherently confusing Ownership Structure Form drafted by the department, further impaired GPA’s ability to discover and correct the clerical error in the voting percentages submitted in its application.


39. Based on the foregoing, the Department’s denial of GPA’s testing application should be reversed because the Department’s action was improper in one or more of the following respects:

- a. It violates the Missouri Constitution;
- b. It is in excess of the Department’s authority;
- c. It is unsupported by competent and substantial evidence;
- d. It is arbitrary, capricious or unreasonable; and
- e. It involves abuse of discretion.

WHEREFORE, Petitioner Green Precision Analytics Inc. prays for judgment granting its medical marijuana testing license, for its reasonable fees and expenses pursuant to RSMo 536.087, and for such other relief as the Commission deems just and proper.

VERIFICATION

I certify under penalty of perjury that the factual statements in this Complaint are true and correct to the best of my knowledge and belief.

Signature: 

Printed Name: P.M. Jeslowski

Date: 12/30/2019

Respectfully submitted,  
JOSEPH, HOLLANDER & CRAFT, LLC

By: /s/ Christopher M. McHugh  
Christopher M. McHugh, MO #51260  
cmchugh@josephhollander.com  
Andrew J. Goodwin, MO #65343  
agoodwin@josephhollander.com  
926 Cherry St.  
Kansas City, MO 64106  
Phone: 816-297-0800

*Attorneys for Petitioner Green Precision  
Analytics, Inc.*