

**IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
CIVIL DIVISION**

**DRAGAN VICENTIC, LICENSEE,
d/b/a GREEN SPRINGS MEDICAL, LLC**

PETITIONER

VS. CASE NO. 26CV-2024-_____

**ARKANSAS ALCOHOLIC
BEVERAGE CONTROL BOARD, AGENCY**

RESPONDENT

PETITION FOR JUDICIAL REVIEW

COMES NOW, the Petitioner, Dragan Vicentic, Licensee, d/b/a Green Springs Medical, LLC, by and through his attorneys, Hurst Law Group, through Q. Byrum Hurst, and for his Petition for Judicial Review herein, he states and alleges:

1. That the Petitioner, Dragan Vicentic, is a citizen and resident of Hot Springs, Garland County, Arkansas.
2. That the Petitioner is Licensee for the business of Green Springs Medical, LLC, a medical marijuana dispensary, located at 309 Seneca Street, Hot Springs, Garland County, Arkansas.
3. That this Petition for Judicial Review and for stay of the Order of June 12, 2024, revoking the license to do business of Dragan Vicentic, as Green Springs Medical and License Number 00021, is filed pursuant to the Arkansas Administrative Procedure Act, A.C.A. § 25-15-212, and the Garland County Circuit Court has jurisdiction over this matter and venue is proper in the Garland County Circuit Court.

FACTUAL ALLEGATIONS

4. That the Petitioner brings this Petition for Judicial Review as an appeal to the Order entered by the Arkansas Alcoholic Beverage Control (hereinafter referred to "ABC"). The revocation of the Petitioner's permit would cause irreparable harm to him as it would place him out of the business of having a dispensary and being able to provide medical marijuana as medication that is prescribed by physicians to Garland County residents.
5. Prior to the revocation order issued by the agency, the Petitioner was filling the needs of some twenty-six thousand (26,000) patients who need medical marijuana for various reasons and are given prescriptions by their physicians. The Petitioner has never had a complaint that one of the twenty-six thousand (26,000) patients it has helped that his dispensary has caused any harm to them from a medical standpoint, but instead has received praise and commendations from patients for providing them with their medical needs which prevents them from having pain, discomfort, and perhaps deterioration of their medical conditions.
6. That the Petitioner submits a decision of the agency to revoke his permit is in violation of the constitutional and/or statutory provisions. He also alleges that this decision is made upon unlawful procedure and the Petitioner submits that there is more than one error at law that occurred during the proceedings. Furthermore, the Petitioner submits that the decision to revoke his permit is not supported by substantial evidence of

record and was arbitrary, capricious, or characterized by abuse of discretion.

7. The Arkansas Constitution Amendment 98 § 8 governs the licensing of Arkansas medical marijuana dispensaries and cultivation facilities. This constitutional amendment gives the Alcoholic Beverage Control division to administer and enforce provisions of Amendment 98. Amendment 98 § 8(4)(n)(1) says that a dispensary license and cultivation facility license shall expire on June 30th of each calendar year and are renewable on or before June 30th of each calendar year for the fiscal year beginning July 1st. (2) The Commission shall issue a renewal dispensary license or renewal cultivation facility license within ten (10) days to any entity in compliance with the requirements contained in this amendment, including without limitation the payment of a renewal fee.
8. This matter commenced on February 2, 2024, when the Petitioner received an Offer of Settlement dated January 29, 2024, from Chip Leibovich, Hearing Attorney for the Alcohol Beverage Control Division, and the letter is attached hereto as Exhibit "A" and incorporated herein by reference as if word for word. This letter alleged that on March 29, 2023, it was discovered that the facility could not locate sixty-eight grams (68 g) and thirty-four (34) prepacked medical cannabis items that were in the inventory tracking system and it alleged that the dispensary possessed thirty-three grams (33 g) of cannabis over what was in the inventory tracking system. It alleged it was all a violation of ABC MM Rule 23.5 (d)

and (f), three (3) counts. It also alleged on March 29, 2023, that the facility failed to conduct a comprehensive biannual inventory of all usable marijuana within the facility, a violation of ABC MM Rule 12.1. It also alleged that on about April 24, 2023, it was discovered that the facility failed to enter correct UINs on cannabis sales of patients, a violation of ABC MM 17.1(a)(vi)(4) and 12.6. It further alleged that on or about August 3, 2023, it was discovered that the facility processing was unsanitary with litter and dirty utensils, a violation of ABC MM Rule 10.6. Furthermore, it was alleged that the facility had received a verbal warning for unsanitary conditions during the March 2023 biannual inspection and the language was "you refused to clean up your facility." The next allegation was on August 3, 2023, it was alleged that it was discovered that the facility could not locate seven hundred and eight grams (708 g) and three hundred and five (305) prepacked medical cannabis items that were in the inventory tracking system and that Green Springs possessed nine grams (9 g) of cannabis over what was in the inventory tracking, all a violation of ABC MM 23.5(d) and (f), and three (3) counts. It was also alleged that on August 3, 2023, that the Licensee failed to cooperate with the ABC Enforcement, a violation of ABC MM Rule 4.1(b), and the final allegation was that on or about October 17, 2023, it was alleged that the facility adjusted inventory weight up due to "moisture loss." Subsequent investigation suggested that this was an error that was remediated. This went on to say that while no violation is issued at this time, you are

warned to track and adjust inventory appropriately to reflect your physical inventory of cannabis products.

9. Then the letter (Exhibit A) stated that the agency was offering a fine of \$28,100.00 as administrative sanctions to be imposed for the violations. Had the Petitioner accepted this offer that would have ended the matter at that point. The letter went on to say you have a right to a hearing before the Director on the charges alleged, but you may waive a hearing in this matter and accept the sanctions offered. If a hearing is held the Director may dismiss the charge or reduce, increase, or adopt the offer made by the agency. The letter went on to say that a form was attached to the letter which must be received by **February 29, 2024**, if you would like to request a hearing you must check the appropriate line. The Petitioner in this matter elected to have a hearing before the Director in order that he could explain his side of the allegations. It is interesting to note that the letter never warns or suggests to the Petitioner and Licensee, Dragan Vicentic, that revocation of the license would be considered. The Petitioner would have had to guess that revocation was implied in some way but he was not specifically advised that he may lose his entire business and his livelihood. It is also the livelihood of fifteen (15) individuals who work at Green Springs.
10. The next correspondence Petitioner received was a letter dated March 7, 2024, setting the hearing in the matter for the 5th day of April, 2024. A

copy of this letter is attached hereto as Exhibit "B" and incorporated herein by reference as set out word for word.

11. Apparently, the ABC Director continued this hearing at her own request and another letter dated April 3, 2024, was received by the Petitioner, which set a hearing for April 18, 2024.
12. On May 2, 2024, the Director issued an Order, which described all of the allegations against the Petitioner and set out that the hearing was held on April 18, 2024, in which it described the ABC agents appeared and Dragan Vicentic appeared, Pro Se. The Director made Findings of Fact and Conclusions of Law and finally on the last page of the Order stated in Paragraph 11, "There is no suitable fine that can correct or otherwise control GSM's reckless endangerment of cannabis patients. The only remedy is to revoke Permit Number 00021, doing business as Green Springs Medical."
13. The Petitioner immediately engaged counsel and filed this appeal of that decision to the full Alcoholic Beverage Control Board within fifteen (15) days from the date of the order. The Alcoholic Beverage Control Board heard the matter and ordered that License 00021, a dispensary facility, is revoked. The Petitioner alleges that first of all when the Offer of Settlement was transmitted to him, he should have been notified and warned that failure to accept the settlement could result in a revocation of his license. Instead, a plain reading of the letter is that if he paid the

proposed settlement of \$28,100.00 it would conclude the matter and there would be no further proceedings.

14. Once the Petitioner requested the hearing, he was not allowed to go back and accept the original offer. In other words, he was penalized for requesting a hearing and he was entitled to know that in his actions to request a hearing might result in revocation of his permit and that he might be penalized further than what was suggested in the allegation by requesting a hearing. The Petitioner and Licensee asking for a hearing should not be taken as a violation of the Medical Marijuana Rules and Regulations or the constitutional amendment. It is a matter of equal protection of the law under the United States Constitution as well as the Arkansas Constitution, which requires that every citizen be given due process of law which implies an element of fundamental fairness.
15. That the Petitioner has now suffered irreparable harm in the loss of his license, which was his livelihood and the livelihood of the people who worked for him on a full-time basis, and further a forfeit of his investment in the operation of his business.
16. That the Petitioner further submits that this was supposed to be a biannual inspection. A biannual inspection should mean an inspection every six (6) months. Yet, the Petitioner's and Licensee's premises were subject to a biannual inspection on March 29, 2023, and another biannual inspection on August 3, 2023, only four (4) months later.

17. The Petitioner alleges that when he brought to the attention of the inspectors that they were at least two months early for the “second biannual inspection” and that it was August 3, 2023, one of his busiest days of the week, they took that as another charge of being uncooperative. There is no evidence that the Petitioner was uncooperative other than questioning about the days of the inspection. He did not prohibit the inspection, nor did he conceal any items in the inspection and there is no evidence that he did such.
18. That the Petitioner submits that the beginning of the month is the busiest sales day that he has. August 3, 2023, was extremely busy because many get their Social Security checks and other paychecks at the beginning of the month, and so they are able to fulfill their medical marijuana prescriptions at that time.
19. In order to maintain good and correct records it is necessary for the facility to be able to give its undivided attention to the customers.
20. That the Petitioner submits that there was no evidence that a patient was in danger. There was no testimony or evidence offered that a patient was endangered.
21. That almost all the allegations against the Licensee related to inventory tracking systems and whether the inventory tracking system was consistent with the on-premises inventory apparently taken by the inspections. There is no evidence of harm coming to any patient and the statements by the Director that revocation was correct because otherwise

there was no control over GSM's reckless endangerment of cannabis patients was an arbitrary and capricious statement and not supported by any evidence at the hearing.

22. That License Number 00021 issued to Dragan Vicentic, Licensee, was the first license issued in the state of Arkansas. It was issued to commence operation of an industry that was initiated by Arkansas Constitutional Amendment Number 98, as the people had voted they wanted to be able to use medical marijuana. Naturally, the first license in an industry that is to be heavily regulated suggests that there is going to be a time period of adjustment and "getting used to" a new industry that is now thriving in Arkansas. Amendment 98, which is called the Arkansas Medical Marijuana Amendment of 2016, has been in existence for less than ten (10) years, and yet, there is no evidence submitted that any patients have been harmed by any endangerment by this Licensee. On the contrary, there is testimony from the pharmacist who was hired by the Licensee to help him in the operation of his business, that the failure to properly label cannabis with a testing date would not affect the health of a patient and there is no evidence to support the Director's arbitrary and capricious statements.
23. There is evidence that the "processing area" described by the inspectors as contaminated with debris and rubbish and unfit for medical purposes was not even in use at the time by Dragan Vicentic or Green Springs

Medical Marijuana Dispensary. The debris and rubbish described by the inspectors was in fact a pair of gloves left on the table.

24. Contrary to the statements made by the Director that there is no final remedy other than revocation, there could always be fines, there could always be conditions placed upon them of hiring more personnel or being placed on probation for a period of time even as suspension, but the Director arbitrarily and capriciously chose revocation which was later adopted by the entire Board with little or no evidence just support their extreme remedy of revocation.
25. That the Alcoholic Beverage Control Board met on June 12, 2024, and confirmed the Director's decision, and the Petitioner and Licensee alleges that the Board made a final ruling and there are no further administrative appeals available. That the Board and Director's decision should be reversed due to the following:
 - (a) The decision is in violation of the Constitution because Amendment 98 mandates that there be medical marijuana dispensaries and a license was provided to the Petitioner.
 - (b) That the decision of the Board was made upon unlawful procedure in view of the fact that in the Offer of Settlement given to the Petitioner, a fine was requested as a remedy to the violations. Had the Licensee paid the fine, there would be no hearing and there would be no revocation, and he was not warned in the Offer of

Settlement letter that if he turned down the offer he would be subject to revocation.

- (c) There were other errors of law involved in this matter as almost all of the allegations against the Petitioner and Licensee were technical errors relating to his failure to keep a proper inventory which could have been the result of computer error or glitches and not a willful conduct by the Licensee.
- (d) That there was not sufficient evidence to support a revocation order as there were other remedies available. This Licensee had never had his license suspended. He had never been placed on any probationary status. He had never been recommended to have any further training and all of those type of remedies would have been more appropriate than a revocation.
- (e) That the action of revoking of the permit is arbitrary, capricious, and characterized by an abuse of discretion. The fact that the Board or the Director does not care for or appreciate the Licensee is not a reason for revocation. The Licensee qualified and received a license and as such, is entitled to have the benefit of any other licensee in fairness and procedures.

PETITIONER'S CONTENTION

- 26. That Petitioner contends that Amendment 98 of the Arkansas Constitution required that the ABC Rules be strictly construed in favor of permittees in

order to foster an effective system for cultivating and dispensing medical marijuana.

27. The Petitioner believes that Arkansas's public policy is that any agency rules should be narrowly construed. The Arkansas Administrative Procedure Act requires that a rule shall be written in plain language. A.C.A. § 25-15-203(b)(c) and the evidence presented did not support the finding of the Board and therefore, the Board's decision was clearly an unwarranted exercise of discretion.

PETITIONER'S REQUEST FOR STAY

28. That in the interest of fairness and justice, the Petitioner would ask that the enforcement of the agency's decision be stayed pending review by this Court.
29. That irreparable harm or injury will come to the Petitioner in the event his license is revoked.
30. That the Petitioner will not only lose his livelihood but there will be over 26,000 patients who have seen Green Springs Medical, LLC for their marijuana products, prescriptions, and needs that will be unable to fulfill those prescriptions. The revocation will cause an intense hardship for these people as the only other dispensaries are a substantial distance from Hot Springs, Arkansas.
31. That the closure of the Licensee's establishment will cause irreparable harm and injury to his personal business as those that have prescriptions will not only have to go elsewhere to fill their prescription but also will most

likely conclude that this particular dispensary is erratic and try to find another place to do business.

32. That the closure of this dispensary may cause patients to try to fill their marijuana medication needs through the black market or through illegal sources and such is against the public policy of the state of Arkansas.
33. That attached hereto is the Affidavit of Dragan Vicentic supporting his request for a stay of enforcement of the agency's decision until it is reviewed by this Court as Exhibit "C" and incorporated here by reference as if set out word for word.

WHEREFORE, the Petitioner, Dragan Vicentic, Licensee, d/b/a Green Springs Medical, LLC, prays that his Petition for Judicial Review be granted and that the decision of the Alcoholic Beverage Control Board of the Department of Finance and Administration be reversed and dismissed; further, that the stay be granted; and for all other just and proper relief to which he may be entitled.

Respectfully submitted,

Dragan Vicentic, Licensee, d/b/a
Green Springs Medical, LLC, Petitioner

By: /s/ Q. Byrum Hurst
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Justin B. Hurst, ABN 2005021
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STATE OF ARKANSAS
**Department of Finance
and Administration**

ALCOHOLIC BEVERAGE CONTROL

101 E. Capitol Ave., Ste 401
Little Rock, Arkansas 72201
Phone: (501)682-1105
Fax: (501) 682-2221
www.arkansas.gov/dfa

January 29, 2024

Received 2/2/24

License #: 00021
GREEN SPRINGS MEDICAL
Dispensary Facility
Dragan Vicentic, LICENSEE
309 Seneca St.
Hot Springs, Arkansas, 71901

OFFER OF SETTLEMENT

A violation report has been filed by the ABC Enforcement Division against Dispensary Facility, held by you to do business as Green Springs Medical, located at 309 Seneca St., Arkansas. You are hereby notified that you are being charged with the following offenses:

On or about March 29, 2023, it was discovered your facility could not locate sixty eight grams (68 g) and thirty-four (34) prepacked medical cannabis items that were in your inventory tracking system and you possessed thirty-three grams (33 g) of cannabis over what was in your inventory tracking, a violation of ABC MM Rule 23.5(d) and (f), three (3) counts.

On or about March 29, 2023, it was discovered that your facility failed to conduct a comprehensive biannual inventory of all usable marijuana within your facility, a violation of ABC MM Rule 12.1.

On or about April 24, 2023, it was discovered that your facility failed to enter correct UIN's on cannabis sales to patients, a violation of ABC MM Rule 17.1(a)(vi)(4) and 12.6.

On or about August 3, 2023, it was discovered your facility's processing was unsanitary with litter and dirty utensils; a violation of ABC MM Rule 10.6. Furthermore, your facility had already received a verbal warning for unsanitary conditions during your March 2023 biannual inspection and you refused to clean up your facility.

On or about August 3, 2023, it was discovered your facility could not locate seven hundred and eight grams (708 g) and three hundred and five (305) prepacked medical cannabis items that were in your inventory tracking system and you possessed nine grams (9 g) of cannabis over what was in your inventory tracking, a violation of ABC MM Rule 23.5(d) and (f), three (3) counts.

EXHIBIT "A"

On or about August 3, 2023, you failed to cooperate with ABC Enforcement, a violation of ABC MM Rule 4.1(b).

X On or about October 17, 2023, your facility adjusted inventory weight up due to "moisture loss." Subsequent investigation suggested this was an error that was remediated. While no violation is issued at this time, you are WARNED to track and adjust inventory appropriately to reflect your physical inventory of cannabis products.

Pursuant to Sections 23.1 and 23.2 of the ABC Oversight Rules for Medical Marijuana, a monetary fine of up to five thousand dollars (\$5000) may be levied against a licensee for each violation. At the present time, the Agency is offering a FINE in the amount of twenty-eight thousand one hundred dollars (\$28100.00) as the administrative sanction to be imposed.

You are hereby advised that you have a right to a hearing before the Director on the charges alleged, but you may waive a hearing in this matter and accept the sanctions offered. If a hearing is held, the Director may dismiss the charge, or reduce, increase, or adopt the offer made by the Agency.

A form is attached to this letter for your response which must be received in this office on or before **February 29, 2024**. If you would like to request a hearing, you must check the appropriate line on the attached form to request a hearing and return it to this office by the aforementioned date. If you prefer to waive a hearing and accept the sanctions listed above, you may do so by checking the appropriate box on the attached form and return it to this office on or before the deadline. **Failure to respond on the attached form by this deadline may result in the Director adopting the agency offer, or increasing your penalty, possibly up to the maximum authorized by law for each violation.**

In the event you request a hearing in this matter by the deadline, you will be notified of the date and time set for the hearing. Should you choose to waive a hearing, an Order will be entered and served to you.

ALCOHOLIC BEVERAGE CONTROL DIVISION


CHIP LEBOVICH, HEARING ATTORNEY



STATE OF ARKANSAS
**Department of Finance
and Administration**

ALCOHOLIC BEVERAGE CONTROL

101 E. Capitol Ave., Ste 401
Little Rock, Arkansas 72201
Phone: (501)682-1105
Fax: (501) 682-2221
www.arkansas.gov/dfa

March 7, 2024

License #: 00021
Dispensary Facility
DBA: Green Springs Medical
Dragan Vicentic, LICENSEE
309 Seneca St.
Hot Springs, Arkansas, 71901

NOTICE OF HEARING

You are hereby notified that a hearing has been scheduled against Dispensary Facility, held by you to do business as Green Springs Medical, located at 309 Seneca St., Hot Springs, Arkansas on the following charges:

1. On or about March 29, 2023, it was discovered your facility could not locate sixty eight grams (68 g) and thirty-four (34) prepacked medical cannabis items that were in your inventory tracking system and you possessed thirty-three grams (33 g) of cannabis over what was in your inventory tracking, a violation of ABC MM Rule 23.5(d) and (f), three (3) counts.
2. On or about March 29, 2023, it was discovered that your facility failed to conduct a comprehensive biannual inventory of all usable marijuana within your facility, a violation of ABC MM Rule 12.1.
3. On or about April 24, 2023, it was discovered that your facility failed to enter correct UIN's on cannabis sales to patients, a violation of ABC MM Rule 17.1(a)(vi)(4) and 12.6.
4. On or about August 3, 2023, it was discovered your facility's processing was unsanitary with litter and dirty utensils; a violation of ABC MM Rule 10.6. Furthermore, your facility had already received a verbal warning for unsanitary conditions during your March 2023 biannual inspection and you refused to clean up your facility.
5. On or about August 3, 2023, it was discovered your facility could not locate seven hundred and eight grams (708 g) and three hundred and five (305) prepacked medical cannabis items that were in your inventory tracking system and you possessed nine grams (9 g) of cannabis over what was in your inventory tracking, a violation of ABC MM Rule 23.5(d) and (f), three (3) counts.

EXHIBIT "B"

6. On or about August 3, 2023, you failed to cooperate with ABC Enforcement, a violation of ABC MM Rule 4.1(b).

7. On or about October 17, 2023, your facility adjusted inventory weight up due to "moisture loss." Subsequent investigation suggested this was an error that was remediated. While no violation is issued at this time, you are **WARNED** to track and adjust inventory appropriately to reflect your physical inventory of cannabis products.

8. On or about October 12, 2023, it was discovered your facility failed to label medical cannabis to patients in compliance with Department of Health Rules, a violation of ABC MM Rule 15.1(b)(iii) and 23.5(h).

9. On or about October 18, 2023, it was discovered that your operator failed to cooperate with ABC Enforcement, selling cannabis products to patients with expired mandatory lab tests after clear and unambiguous directive from ABC to cease such practices, a violation of ABC MM Rule 4.1(b).

10. On or about January 30, 2024, it was discovered that your facility sold medical cannabis that had expired, invalid lab testing, a violation of ABC MM Rule 23.2(l) and 23.5(b), one hundred and fifty-one (151) counts. Your facility sold over eighteen hundred (1800) separate items across one hundred and fifty-one (151) separate UIN's of products that had expired test results.

The hearing will be held in the Fourth Floor Conference Room at 101 E. Capitol Ave., Suite 401, Little Rock, Arkansas, on April 5th, 2024 at 9:00 a.m and will be for the purpose of determining whether your license should be continued, suspended, fined, or revoked.

You are further notified that if you have a defense to the charges you should attend the hearing and you may be represented by counsel. You may attend the hearing in-person or virtually using the Go-To link: <https://meet.goto.com/380697413> or calling in (224) 501-3412 with access code 380-697-413.

ALCOHOLIC BEVERAGE CONTROL DIVISION


CHIP LEIBOVICH, HEARING ATTORNEY

CL

New

LR
Hearing
→

ST
DOM

Certificate of Service

I have this _____ day of _____, 20____, served this document on

Permittee Signature

Agent Signature

USPS CERTIFIED MAIL

ABC
ST OF AR DEPT OF FINANCE &
ADMIN
1816 W 7th St
Little Rock, AR 72201



9414 8149 0145 2597 1225 21

DRAGAN VICENTIC
GREEN SPRINGS MEDICAL
309 Seneca St
Hot Springs National Park, AR 71901-7804

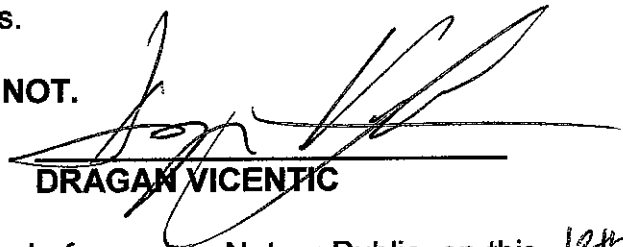
I did note, that after I got the Offer of Settlement letter from Mr. Leibovich, I received a Notice of Hearing that a hearing would be conducted on April 4, 2023, but that date was continued by the ABC as I was never asked whether I objected to a continuance nor was asked to make any comment.

The matter was continued until April 18, 2024, and I did appear Pro Se because although I knew that the fine might be increased, I never believed from reading the original Offer of Settlement that a revocation would be likely.

I have never had a suspension or any other sanction except a fine. I think there is a certain "learning curve" in operating a medical marijuana dispensary, but I was never given the opportunity to do some additional training on the inventory control system or any of the other heavily regulated requirements of the medical marijuana industry.

Obviously, a revocation creates irreparable harm to me as we lose customers, lose reputation, and all of my fifteen (15) employees lose their jobs besides losing plumbers, electricians, and other service industry people that regularly help us at our location. There was never any evidence offered that anyone was harmed as a result of any alleged violation of the medical marijuana rules.

FURTHER AFFIANT SAYETH NOT.


DRAGAN VICENTIC

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 12th day of June, 2024.

MY COMMISSION EXPIRES:


NOTARY PUBLIC

10-21-2026

