

## Eleventh-Hour Hearing Fails to Check Provisional Medical Marijuana Production Licenses

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Marijuana

### What You Need to Know

- The Georgia Access to Medical Cannabis Commission awarded provisional licenses to companies unable to begin production due to pending protest litigation.
- Speculated reasons for the sudden move include ongoing, continuous lawsuits and patient need for medical marijuana.
- The move will not affect the cases still being argued in trial court or the protestors' petition for certiorari with the state supreme court.

Courthouse drama engulfed the Georgia Access to Medical Cannabis Commission's decision to award provisional contracts to winning bidders, while litigation filed by losing companies to delay the awarding of those contracts continues in trial court.

But that drama didn't halt the commission's decision.

"[Wednesday] was a big day for the patients of Georgia, who have been waiting a long time for the promise of access to medical cannabis to be fulfilled under the Hope Act," Derek Bauer, of Baker Hostetler, who represents winning Class Two bidder Fine Fettle said. "Literally dozens of judges have now reviewed the protests and not one has found merit in any of them. The protestors have done a remarkable job of extending the conclusion of the procurement process."

On Tuesday afternoon the Commission announced it'd be holding a meeting to discuss issuing provisional contracts the next day. Bauer said his client had the feeling one of the losing companies, represented by Jake Evans of Greenberg Traurig, would try to get a TRO to keep the GMCC from meeting.

Accordingly, Bauer said a member of his litigation team camped outside the Superior Court of Fulton County Presiding Judge Belinda Edwards' courtroom in case a protestor tried to get an ex parte injunction—which is exactly what happened.

The presiding judge told the protestor that she would not hear the motion if the judge assigned to the case—Rachel Krause—was available to hear it, and, according to Bauer, chastised them for trying to go around Krause without first seeing if she could hear the motion. Edwards' staff then called Krause, who said she would hear the motion at 3 p.m. She presided over that Zoom hearing from her car and then denied the TRO motion at 3:50 p.m. (10 minutes before the commission meeting started).

"The licenses awarded were provisional, not final. While it is our strong position that this award violates Georgia law in light of the pending lawsuits, it does not affect the relief that we seek in the courts," Evans said.

In 2019, the Georgia General Assembly passed a law that would allow for medical marijuana production and created a pathway for hopeful companies to get licenses to do so. The law, known as the Hope Act, created six licenses—two Class One and four Class Two, differentiated by production capacity—and an oversight board known as the Georgia Access to Medical Cannabis Commission, or GMCC.

Jake Evans of Greenberg Traurig. (Courtesy photo)

The application window opened in November 2020, and the commission published application instructions and the metrics by which the applications would be evaluated. Winners would be announced by posting a "notice of intent to award," not the actual contract.

The Class One licenses had already been awarded, but the losing bidders filed their protest cases under the APA and got ex parte stay orders in their home counties shortly before the Class Two licenses were issued, halting the licensing process until this week.

While, according to Derek Bauer of Baker Hostetler, counsel for Fine Fettle, one of the winning Class Two Bidders, "The litigations are very much trending towards resolution of all of the protests in favor of the Class 2 winners, there is still a lot of litigation going on and will be for the foreseeable future."

Bauer said this, combined with the fact that license awards have now been stalled for over two years, delaying the distribution of medical marijuana to potential patients, led the GMCC to issue temporary production licenses, with the caveat that they'll automatically terminate if the protestors prevail in the underlying litigation.

Indeed, according to the GMCC's notice of the provisional license awards, "The number of lawsuits that may continue to be filed, voluntarily dismissed, refiled, or decided and/or dismissed by a court of competent jurisdiction is uncertain—however, the need for low-THC oil and products as medical treatment and relief for patients in Georgia is certain."

"[Since] the the original notice of intent to award was issued by the Commission, we've had over 30 legal actions filed by unsuccessful applicants to try to prevent the issuance of the licenses to [my client] and the other successful Class Two applicants," **Vincent Russo of Robbins Alloy Belinfante Littlefield, counsel for winning bidder TheraTrue said.** "That litigation is continuing, but we've been successful in all of it, to

date, and have no reason to think we won't continue to be successful.

As of Wednesday, there are only two certiorari cases involving Class Two production licenses left pending in the Superior Court of Fulton County, both with hearings scheduled for December. Of the five that were originally filed, two have been dismissed with prejudice. Of the seven total original Class Two protesting litigants, in October two also jointly filed another lawsuit pending in Fulton County.

This month, the Georgia Court of Appeals also denied three protestors' motions for reconsideration, upholding its October decision affirming the dismissal of their claims under the APA. The protestors have since filed notice of intent to seek certiorari by the Supreme Court of Georgia. According to Bauer, "While it is highly unlikely the Georgia Supreme Court would take up any of those petitions, it will take many months for that process to conclude."