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What You Need to Know

- Most of Georgia's medical marijuana protest cases are still pending an appellate court decision.
- However, after a procedural, one company's case may now move forward in the Superior Court of Fulton County.
- While plaintiffs proposed a hearing for Dec. 4, the Georgia Medical Access to Cannabis Commission asked to court to schedule for as early as Sept. 4.

One company protesting the Georgia Access to Medical Cannabis Commission, or GMCC's, production licensing awards could finally get closer to seeing its day in court—but will it?

Since Greenberg Traurig's Jake Evans appealed a Warren County trial court dismissal of the losing license bidder Aspire Medical Partners' case for failure to file a transcript within a timely manner in May 2023, the pending protest litigation has seen several noteworthy developments.

Georgia's medical marijuana licensing act created provisions for "Class One" and "Class" licenses, differentiating between medical and non-medical use. Since the production license recipients were announced, however, the actual licensing process has been stalled through protest litigation filed by losing bidders.



Jake Evans of Greenberg Traurig. (Courtesy photo)

The Georgia Court of Appeals dismissed Evans' Warren County case on Aug. 1 because "Aspire Medical failed to file a discretionary application from the judgment it now seeks to appeal," according to the order.

Up until this point, much like the other losing bidders, the Aspire case had iterations pending in the court where the company is based (Warren County), Fulton County Superior Court and the Georgia Court of Appeals. The appellate court was still in the process of deciding what jurisdiction was appropriate for the case, which put a stay on Aspire's petition for certiorari with the Fulton County Superior Court. Now that the case is officially dismissed, there is no longer a basis for the stay on the Fulton case.

While proponents of the suits, including the Georgia First Amendment Foundation, argue the litigation addresses a stark lack of transparency in the licensing process, critics argue that the losing companies are asking the state to create additional licenses for them instead of acknowledging that they lost fair and square and could set a dangerous precedent for future government contracts.

"Countless pending cases, including Aspire's bid protest under O.C.G.A. § 5-4-1, highlight the improper nature of this unique licensing procurement process," Evans said.

“This dismissal resulted from Mr. Evans’ failure to follow proper appellate procedure in seeking review of the court’s decision to dismiss his client’s superior court case due to untimely submission of the lower court record,” said Kristen Goodman of Hall Gilligan Roberts & Shanlever who represents losing bidders Symphony Medical and Pure Peach.

“This is the second time that Aspire had its appeal dismissed for failing to comply with the rules of appellate practice in Georgia, but the Court of Appeals made the right decision under the circumstances,” said Robbins Alloy of Robbins Alloy & Pritchett, who represents TheraTrue, a winning bidder whose license



Vincent Robert Russo Jr. (Photo: Rebecca

Breyer/ALM)

“We hope this recent dismissal will allow us to move forward with the remaining cases that are holding up the licensing process and preventing patients in Georgia from having access to medication,” Russo continued.

However, the losing bidders aren’t keen on giving up the ghost. “Aspire and the other protestors will continue to challenge this flawed licensing procurement process, which consisted of a lack of transparency and other ailments, in numerous courts throughout Georgia,” Evans said.

A recent filing by the GMCC contesting Aspire’s recently proposed scheduling order for a December hearing date in the Fulton County case, on the other hand, questions these intentions.

According to the motion, “It appears that Aspire strategically filed its motion for the purpose of unnecessarily extending and expanding this case thereby delaying the hearing.”

Evans responded: “The due process clauses of the U.S. and Georgia Constitutions provide for a fair hearing, including an opportunity to have needed evidence and confront the evidence presented against you. Aspire was denied this right and is seeking discovery to obtain a semblance of a fair hearing.”

Goodman said the Aspire appellate court dismissal “is not related to and will have no effect on the other protestors pending appeals or other litigation.” Evans also represents losing bidders Windflower and GABRI, who have their own pending cases.

The other protestors recently filed petitions for certiorari with the Superior Court of Fulton County on July 23, six months after voluntarily dismissing them in January, in order to preserve their right to appeal. Those

cases will continue to wait for the Georgia Court of Appeals to decide whether their home jurisdictions or Fulton are the appropriate venues for the litigation. Aspire is the only company to have had a Fulton County case pending since January.

Read the Court of Appeals' dismissal below.