

Ga. Cannabis Co. Can't Appeal Agency's License Denial

By **Kelcey Caulder** · [Listen to article](#)

Law360 (August 2, 2023, 6:39 PM EDT) — The Georgia Court of Appeals rejected an appeal by a company that hoped to reverse the denial of its medical cannabis license but had its appeal of that decision thrown out by a lower court, saying it lacks jurisdiction because the company failed to file an application for discretionary appeal.

Aspire Medical Partners LLC previously appealed a superior court order that tossed its case seeking review of the Georgia Access to Medical Cannabis Commission's decision to deny it a license to manufacture and sell medical cannabis. The Georgia Court of Appeals agreed in November to consider that appeal, but the lower court later tossed it altogether, finding Aspire had caused an unreasonable delay by failing to timely file a necessary transcript.

Aspire has since asked the Georgia Court of Appeals to step in and review the dismissal, but on Tuesday, the judges **said** they could not do so because Aspire filed a direct appeal of the dismissal order, rather than an application for discretionary appeal.

While an order dismissing an appeal based on a delay in filing a transcript can be directly appealable, the judges said that is not the case when the underlying subject matter requires a discretionary application for appellate review.

"An appeal from a decision of the superior court reviewing a decision of a state administrative agency requires an application for discretionary appeal," the judges said. "In this case, the State Office of Administrative Hearings affirmed GAMCC's decision to deny a license to Aspire Medical. And the superior court dismissed Aspire Medical's petition for judicial review. Thus, the underlying subject matter is the superior court's review of a decision of a state administrative agency."

According to court records, Aspire filed suit in September 2022, seeking judicial review of GAMCC's final decision denying its applications for Class 1 and Class 2 licenses to manufacture and distribute medical cannabis, review of GAMCC's decision to award licenses to other applicants, and a stay that would prevent licenses from being awarded to those whose applications were successful until after its requested review was complete.

Those things were necessary, Aspire alleged in its suit, because it and other companies challenging the denial of their license applications were wrongfully denied documents they needed to meaningfully do so and were faced with "unrealistic and unfair" schedules and rules as they made their challenges. Aspire further alleged that the license application and award process itself was unfair, arguing statutes and rules intended

to govern the process were violated throughout.

A Warren County Superior Court judge later dismissed the suit in October, finding that it lacked jurisdiction to review GAMCC's final decision related to the licenses.

Aspire appealed that ruling the following month, asking the Georgia Court of Appeals to resolve whether unsuccessful applicants for medical cannabis licenses could seek judicial review of final agency decisions by filing a petition for judicial review under Georgia's Administrative Procedure Act.

The Georgia Court of Appeals agreed to hear Aspire's appeal in November, records indicate. But in May, GAMCC and the businesses whose granted licenses were being held up filed in the trial court a motion to dismiss the case based on Aspire's delay in filing a transcript.

GAMCC argued that Aspire was required to file a transcript within 30 days but had missed that deadline by "more than 110 days," calling the delay "both inexcusable and unreasonable." As a result, GAMCC said the appeal must be dismissed.

The trial court was persuaded and dismissed the appeal in May, saying in its order that Aspire had "significantly exceeded" the deadline for filing a transcript and that the delay caused the appeal to "become stale."

Jake Evans of Greenberg Traurig LLP, who represents Aspire, told Law360 Thursday that the appellate court's decision doesn't mark the end of companies challenging what they see as an unfair licensing process.

"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. "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."

Vincent Russo, an attorney representing TheraTrue Georgia LLC, one of the companies that was granted a license during the initial process and sought dismissal of Aspire's appeal, told Law360 that the "prolonged legal proceedings and delay tactics" of unsuccessful bidders are hurting Georgia patients who are unable to get their medication, local economies and businesses that are stuck in "baseless litigation."

"Aspire's action not only lacked merit, but it had several significant procedural deficiencies throughout the course of the litigation and appeals," Russo said. "This recent dismissal really is not surprising."

Counsel for the remaining parties did not respond immediately to requests for comment.

Earlier this year, legislation that would have more than tripled the number of cannabis cultivation licenses in Georgia and mooted litigation over the handling of the applications **failed by one vote**.

GAMCC is represented by Christopher M. Carr, Margaret K. Eckrote, Daniel Walsh, Jeffrey W. Stump, Charles Thimmesh and Crystal S. Lang of the Georgia Office of the Attorney General.

Aspire Medical Partners LLC is represented by James Cullen Evans and Ansley Mikayla Mobley of Greenberg Traurig LLP.

FFD GA Holdings LLC is represented by Jacqueline T. Menk, S. Derek Bauer and Kurt E. Lentz of Baker & Hostetler LLP.

TheraTrue Georgia LLC is represented by **Vincent R. Russo, Matthew T. Parrish, Anna Edmondson** and **Javier Pico Prats** of Robbins Alloy Belifante Littlefield LLC.

Treevana Remedy Inc. is represented by William C. Collins Jr. and Joseph H. Stuhrenberg of Burr & Forman LLP.

Natures GA LLC is represented by Jeffrey A. Zachman, Sarah E. Trevino and Joanne Caceres of Dentons US LLP.

Botanical Sciences LLC is represented by Jeffrey A. Zachman, Samuel S. Olens, Mark A. Silver and Sarah E. Trevino of Dentons US LLP.

Trulieve GA Inc. is represented by Jeremy Berry and Joseph J. Siegelman of Chilivis Grubman LLP.

The case is Aspire Medical Partners LLC v. Georgia Access To Medical Cannabis Commission et al., case number A23A1727, in the Georgia Court of Appeals.

-Editing by Vaqas Asghar.