

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Ron DeSantis
Governor

Joseph A. Ladapo, MD, PhD
State Surgeon General

Vision: To be the **Healthiest State** in the Nation

Sent via Electronic Delivery

May 25, 2023

Esposito Nursery Inc.
c/o Katherine Viker, Esq.
2743 Capital Cir NE
Tallahassee, Florida 32308
info@pharmpham.com

Re: Application for MMTC Licensure – Errors and Omissions Letter

Dear Esposito Nursery Inc.,

On April 26, 2023, the Florida Department of Health received your application for MMTC licensure (the "Application"). The Department has identified the following apparent errors or omissions in your Application.

As a preliminary matter, the Department has reviewed the Application for errors and omissions and notes that the Applicant identified in Form 1, Esposito Nursery, Inc., is a separate and distinct legal entity from Pharm Pham LLC, which is identified as a purported fictitious name, even though it is a distinct legal entity.

It is up to you to decide whether Esposito Nursery Inc. will be the applicant or whether Pharm Pham, LLC, a separate corporate entity, will be the applicant. There is no provision in Department Emergency Rule 64ER22-9 authorizing joint applications or authorizing the use of two different corporations to satisfy the statutory requirements of section 381.986, Florida Statutes. Please advise how you intend to proceed.

If you elect to proceed as Esposito Nursery, Inc., the following errors and omissions are apparent in the Application:

1. Subsection 4.3.3, Level 2 Background Screening

Subsection 4.3.3 of the Medical Marijuana Treatment Center License Application Instructions, Requirements and Forms (the "Application Instructions") requires an applicant's owners and managers to submit a full set of fingerprints to a Livescan Service Provider for purposes of level 2 background screening. The Department has not yet received an FDLE background report for the following individual, who is identified as an owner or manager in Subsection 4.3.3 of your Application:

435.09

Please ensure that this individual has successfully submitted a full set of fingerprints to a Livescan Service Provider for purposes of level 2 background screening. Once that is accomplished, the Department will be provided the background report by FDLE.

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Additionally, Subsection 4.3.3 of the Application Instructions requires that the applicant submit a completed Form 2 (Waiver Agreement and Statement) for each owner or manager. [REDACTED] 435.09 [REDACTED] are listed as owners or managers in Subsection 4.3.3 of your Application. However, your Application does not contain a completed Form 2 for [REDACTED] 435.09 [REDACTED].

Please provide a completed Form 2 for [REDACTED] 435.09 [REDACTED].

2. Section 4.9, Medical Director

Section 381.986(8)(b)9., Florida Statutes, requires that an applicant for MMTC licensure demonstrate the employment of a medical director to supervise the activities of the MMTC. To implement this statutory requirement, Section 4.9 of the Application Instructions requires each applicant to submit information concerning the applicant's proposed medical director, including the submission of a completed Form 4 (Medical Director Acknowledgement).

The Application includes two Form 4's for two different doctors. Additionally, each of the forms reflects that the doctor agrees to be the medical director for Pharm Pham, LLC, not for Esposito Nursery Inc.

Please submit a completed Form 4 identifying the applicant as Esposito Nursery Inc.

Additionally, the information about two doctors as included throughout Subsections 4.9.1, 4.9.2, 4.9.3, 4.9.4, and 4.9.5 makes it unclear which doctor the applicant is putting forward as the primary medical director who will supervise the activities of the MMTC.

Please submit information clarifying which of the two identified doctors will serve as the applicant's Medical Director.

3. Subsection 4.12.1, Certified Financial Statements

Section 381.986(8)(b)7., Florida Statutes, requires that an applicant for MMTC licensure demonstrate "the financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financial statements to the Department." Subsection 4.12.1 of the Application Instructions requires the submission of certified financial statements that are prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") and audited in accordance with U.S. Generally Accepted Auditing Standards ("GAAS") by a Certified Public Accountant ("CPA"), licensed pursuant to Chapter 473, Florida Statutes, or licensed by another state.

The Application does not include certified financial statements of Esposito Nursery, Inc., as required by section 381.986(8)(b)7., Florida Statutes, and Subsection 4.12.1 of the Application Instructions.

Please provide certified financial statements for Esposito Nursery, Inc., as required by Subsection 4.12.1 of the Application Instructions.

4. Subsection 4.13.2, Ownership Information for Entity Applicants

All applicants must provide sufficient documentation to the Department to provide assurance that the applicant seeking licensure as an MMTC is in compliance with sections 381.986(8)(b) and 381.986(8)(e)2., Florida Statutes. Subsection 4.13.2 of the Application Instructions directs applicants to provide specific ownership information.

Although Subsection 4.13.2 of your Application includes ownership information, it does not include information about Esposito Nursery, Inc. It includes [REDACTED] 119.0715 [REDACTED].

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Please provide the information for Esposito Nursery, Inc., as required by Subsection 4.13.2 of the Application Instructions.

5. Subsection 4.13.3, Capitalization Tables, Changes of Control, and Related Entities

All applicants must provide sufficient documentation to the Department to provide assurance that the applicant seeking licensure as an MMTC is in compliance with sections 381.986(8)(b) and 381.986(8)(e)2., Florida Statutes. Subsection 4.13.3 of the Application Instructions directs applicants to provide specific ownership information, such as a capitalization table, all as more fully described in Subsection 4.13.3 of the Application Instructions.

The information included in Subsection 4.13.3 of your Application does not include information about Esposito Nursery, Inc. It includes **119.0715**.

Please provide the information for Esposito Nursery, Inc., as required by Subsection 4.13.3 of the Application Instructions.

If you elect to proceed as Pharm Pham LLC, the following errors and omissions are apparent in the Application:

1. Section 4.1, Applicant Information

Section 4.1 of the Application Instructions requires applicants to provide a completed Form 1 (Applicant General Information) identifying the applicant for MMTC licensure.

In your Application, you included a Form 1 identifying Esposito Nursery Inc. as the applicant.

Please provide a completed Form 1 identifying Pharm Pham LLC as the applicant.

2. Subsection 4.3.1, Florida Business Registration

Section 381.986(8)(b)1., Florida Statutes, requires an applicant for MMTC licensure to demonstrate “that, for the 5 consecutive years before submitting the application, the applicant has been registered to do business in the state.” Subsection 4.3.1 of the Application Instructions lists the documentation that an entity must include in its application in order to satisfy this statutory requirement.

Although your Application includes a certificate of status from the Department of State for Esposito Nursery, Inc., it does not include a certificate of status for Pharm Pham LLC.

Please provide a certificate of status for Pharm Pham LLC demonstrating that Pharm Pham LLC has been registered to do business in Florida for 5 consecutive years before submitting the Application.

3. Subsection 4.3.2, DACS Documents

Section 381.986(8)(b)2., Florida Statutes, requires an applicant for MMTC licensure to demonstrate possession of a valid certificate of registration issued by the Department of Agriculture and Consumer Services (DACS) pursuant to section 581.131, Florida Statutes. Subsection 4.3.2 of the Application Instructions instructs an applicant to include in its application a copy of a current, valid certificate of registration issued to the applicant by DACS pursuant to section 581.131, Florida Statutes.

Although your Application includes a DACS certificate of registration issued to Esposito Nursery, Inc., it does not include a certificate of registration issued to Pharm Pham LLC.

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Please provide a copy of a current, valid certificate of registration issued to Pharm Pham LLC by DACS, as provided in section 581.131, Florida Statutes, and Subsection 4.3.2 of the Application Instructions.

4. Subsection 4.3.3, Level 2 Background Screening

Subsection 4.3.3 of the Application Instructions requires an applicant's owners and managers to submit a full set of fingerprints to a Livescan Service Provider for purposes of level 2 background screening. The Department has not yet received an FDLE background report for the following individual, who is identified as an owner or manager in Subsection 4.3.3 of your Application:

- 435.09

Please ensure that this individual has successfully submitted a full set of fingerprints to a Livescan Service Provider for purposes of level 2 background screening. Once that is accomplished, the Department will be provided the background report by FDLE.

Additionally, Subsection 4.3.3 of the Application Instructions requires that the applicant submit a completed Form 2 (Waiver Agreement and Statement) for each owner or manager. 435.09 are listed as owners or managers in Subsection 4.3.3 of your Application. However, your Application does not contain a completed Form 2 for 435.09

Please provide a completed Form 2 for 435.09

Finally, the completed Form 2s provided in your application identify Esposito Nursery Inc. as the applicant for MMTC licensure.

Please submit a corrected and completed Form 2 for each owner and manager identifying Pharm Pham LLC as the applicant for MMTC licensure.

5. Section 4.9, Medical Director

Section 381.986(8)(b)9., Florida Statutes, requires that an applicant for MMTC licensure demonstrate the employment of a medical director to supervise the activities of the medical marijuana treatment center. To implement this statutory requirement, Section 4.9 of the Application Instructions requires each applicant to submit information concerning the applicant's proposed medical director, including the submission of a completed Form 4 (Medical Director Acknowledgement).

The Application includes two Form 4's for two different doctors. Additionally, the information about two doctors as included throughout subsections 4.9.1, 4.9.2, 4.9.3, 4.9.4, and 4.9.5 makes it unclear which doctor the applicant is putting forward as *the* medical director who will supervise the activities of the medical marijuana treatment center.

Please submit information clarifying which of the two identified doctors will serve as the primary Medical Director.

6. Subsection 4.13.3, Capitalization Tables, Change of Control, and Related Entities

Section 4.13.3 of the Application Instructions requires an applicant to identify the natural person owners and natural person beneficiaries of all entities listed on the requested capitalization table.

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Subsection 4.13.3 of your Application includes a capitalization table for Pharm Pham, LLC that appears to identify entities as owners or interest holders, but you did not identify all natural person owners and investors of those entities, nor do you provide the percentage ownership for each owner.

Please provide a single, aggregated and fully diluted capitalization table to sum all natural person interests to 100%. The table must list all share types and interests and must show the aggregate sum of shares, including those associated with or flowing to any natural person owners or investors of any entities with ownership interests in Pharm Pham LLC.

Additionally, for purposes of ownership attribution, please provide the nature of the familial relationship, if any, among and between the individuals listed in Subsection 4.13.3 of the Application, **119.0715**
[REDACTED]

Lastly, if any natural person meets the definition of "owner" or "manager," even if by familial attribution of ownership (as provide by Department rule), such natural persons must submit a completed Form 2 and a full set of fingerprints to a Livescan Service Provider for purposes of level 2 background screening. Those natural persons must also be added to an updated list of owners and managers in Subsection 4.3.3 of your Application and submitted to the Department.

Deadline to Respond

The Department must receive the above-requested documentation and information within twenty-one (21) calendar days of the date on which the Department emails this letter to you. See Section 5.1 of the Application Instructions for the submission address and requirements. Failure to supply the requested documentation and information identified above may result in denial of your Application.

If any materials submitted to the Department in response to this letter contain confidential information, you must comply with the requirements of Section 2.4 of the Application Instructions when submitting such information.

Sincerely,

Christopher Kimball

CHRISTOPHER KIMBALL
Director
Office of Medical Marijuana Use