STATE OF FLORIDA
DEPARTMENT OF HEALTH

LOOP'S NURSERY & GREENHOUSES, INC.,

Petitioner,

v. DOAH Case No.: 15-7274

DEPARTMENT OF HEALTH, OFFICE OF COMPASSIONATE USE,

Respondent.

_____/

FINAL ORDER

THIS MATTER came before the Department of Health ("Department") for the consideration of a Recommended Order and entry of a Final Order. On October 7, 2016, Administrative Law Judge R. Bruce McKibben issued a Recommended Order following an administrative hearing. The Recommended Order is attached as Exhibit A. The Petitioner, Loop's Nursery and Greenhouses, Inc. ("Loop's") timely filed exceptions to which the Department of Health, Office of Compassionate Use ("OCU") filed responses. OCU timely filed exceptions to which Loop's filed responses. After review of the entire record, the Department makes the following findings and conclusions:

STANDARD OF REVIEW FOR RULING ON EXCEPTIONS TO A RECOMMENDED ORDER

Section 120.57(1)(k), Florida Statutes, directs that a final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or

paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

An agency may not reject or modify findings of fact in a recommended order unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *See* section 120.57(1)(l), Florida Statutes.

An agency may reject or modify the conclusions of law over which the agency has substantive jurisdiction and interpretation of administrative rules over which the agency has substantive jurisdiction. *See* section 120.57(1)(l), Florida Statutes. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. *See id.*

RULING ON LOOP'S EXCEPTIONS

Ruling on Loop's Exception No. 1

Loop's takes exception to the finding of fact in paragraph 5 of the Recommended Order. The paragraph states:

> The 2016 Law thus effectively approved the applications of Chestnut Hill and San Felasco by legislative fiat, declaring the Department's preliminary agency action to be final. Those two entities withdrew their petitions for formal administrative hearing and, upon accomplishing certain preliminary requirements were to be granted licenses as DOs in the Northeast Region.

Loop's argues that this paragraph is an erroneous interpretation of chapter 2016-123, Laws of Florida, and that there is no competent substantial evidence to support the finding that Chestnut Hill and San Felasco accomplished certain preliminary requirements. OCU argues that this paragraph is immaterial to the findings in the instant case.

The ALJ provides background information in this paragraph. The ALJ did not make a finding as to what preliminary requirements were met by Chestnut Hill and San Felasco. The conclusion that the 2016 Law resulted in the approval of Chestnut Hill and San Felasco by legislative fiat is a correct interpretation of the law.

Loop's Exception No. 1 is denied.

Ruling on Loop's Exception No. 2

Loop's takes exception to the Recommended Order paragraph number 15 in its entirety along with its accompanying endnote, labeled as a finding of fact. The paragraph and endnote state:

> 15. However, Loop's has the burden in the present case to show that it satisfied the requirements to such an extent that it, rather than Chestnut Hill or San Felasco, should have received the highest point total upon comparative review.
>
> Endnote 1: This matter is unique in its stature at DOAH. Loop's is charged with proving, by comparative review, that its application was--at the time OCU made its decision--superior to the applications of Chestnut Hill and San Felasco. This case is akin to the comparative review done by an ALJ in certificate of need cases, but the facts here are limited to those existing at the time the applications were reviewed by OCU. However, neither of the competing applicants was involved in the final hearing (after being denied intervenor status) and all evidence concerning their applications was essentially uncorroborated hearsay. This fact significantly impaired Loop's ability to meet its burden of proof. Loop's might have remedied this by calling witnesses from the competing applicants, but that will never be known.

Although labeled a finding of fact, the statements in paragraph 15, and endnote 1, concerning the burden of proof, are conclusions of law.

As to paragraph 15, Loop's argues that it has the burden of presenting credible evidence that provides "reasonable assurances" of entitlement to a license. At that point OCU must present credible evidence of equivalent quality to rebut the evidence presented by Loop's, citing *Fla. Dep't of Transportation v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). OCU has responded, arguing that the burden shifting described in *J.W.C.* does not apply under chapter 2016-123, Laws of Florida section 3(2).

Loop's has misconstrued what the First District Court of Appeals held in *J.W.C.* Loop's reference to "reasonable assurances" is misplaced. *J.W.C.* involved an application for a permit for construction of a complex source of air pollution. According to Florida Administrative Code Rule 17-4.07[1] such a permit applicant was required to provide reasonable assurances that pollution standards would not be violated. The reference in *J.W.C.* to "reasonable assurances" is not a general concept relating to license applications and is not found in the statues and rules governing applications for approval to operate as a low-THC dispensing organization ("DO").

It is fundamental that an applicant for a license carries the ultimate burden of persuasion of entitlement through all proceedings. *J.W.C.* at 787. The ALJ was correct that it was Loop's burden to demonstrate by a preponderance of the evidence that it should have received the highest point total upon comparative review.

Loop's exception 2 is denied.

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[1] The current rule contains the same language. *See* Fla. Admin. Code R. 62-4.070.

Ruling on Loop's Exception No. 3

Loop's takes exception to the finding of fact in paragraph 16 indicating that San Felasco and Chestnut Hill sufficiently provided the information requested in Part I of the application and there appeared to be no dispute that all three applicants sufficiently satisfied Part I.

Loop's argues that there was no evidence establishing that the information in Part I of San Felasco and Chestnut Hill's applications was true and accurate.

The applications were admitted into evidence. Part I of the application requested the applicant to provide basic information such as name and address. In review of the entire 12-volume transcript of the seven-day hearing, the only testimony concerning Part I was a brief description of the information requested. The remaining testimony concerned Part II and to a large extent Part III. Thus, there did not appear to be any dispute concerning whether all applicants provided the information requested in Part I of the application. There is competent substantial evidence to support the ALJ's finding.

Loop's Exception No. 3 is denied.

Ruling on Loop's Exception No. 4

Loop's takes exception to the ALJ's findings in paragraphs 19, 20, 21, 51 and 52, explaining that the disputed portions of those paragraphs were the items that were underlined in Loop's exceptions. Loop's did not underline any portions of paragraphs 19-21 and therefore did not identify the disputed portions of those paragraphs as required by section 120.57(1)(k), Florida Statutes. It is not necessary to rule on exceptions that do not clearly identify the disputed portions in the Recommended Order. *See id.*

Loop's takes exception to the conclusion of law in paragraph 51 of the Recommended Order which states:

> A nursery is not a person, corporate or otherwise; it is grounds or premises. Thus, none of the corporate applicants to be a DO in Florida could have literally satisfied the requirement to have been operated as a "nursery." DACS also issues certificates of registration to stock dealers, agents, or plant brokers, each of which is defined as a "person" in section 581.131. But receipt of a certificate of registration by a stock dealer, agent, or plant broker does not make that person a "nursery."

Loop's takes exception to the conclusion of law in paragraph 52 of the Recommended Order which states:

> Inasmuch as no applicant could have literally complied with the requirement to be a registered nursery, the Department's interpretation of the statute to allow applicants who operate--rather than operate as--a registered nursery for 30 continuous years to be deemed compliant with the statutory requirement is accepted. (See Chiles v. Dep't of State, Div. of Elect., 711 So. 2d 151 (Fla. 1st DCA 1998). If Chestnut Hill had a letter from DACS that it had operated a nursery for 30 continuous years, then its application should have been comparatively reviewed with the other applicants.

Loop's argues that Chestnut Hill did not meet the 30-year requirement because it became a corporate person in 2005, based on a Department of State filing showing that Chestnut Hill changed its corporate structure.

The conclusions of law in paragraphs 51 and 52 concern section 381.986, Florida Statutes, over which the Department has substantive jurisdiction. The ALJ was correct to accept the Department's determination that a certification letter from the Department of Agriculture and Consumer Services ("DACS") indicating that an applicant operated as a regi stered nursery for 30 continuous years was sufficient evidence demonstrating satisfaction of the 30-year statutory requirement.

Loop's Exception No. 4 is denied.

Ruling on Loop's Exception No. 5

Loop's takes exception to portion of the finding of fact in paragraph 25 which states, "Pursuant to those instructions, the scorers performed their comparative

evaluations independently, not communicating with one another during the review process." Loop's asserts there is no competent substantial evidence to support this finding.

There is competent substantial evidence to support this finding, both in the testimony of Christian Bax, and the memorandum to the evaluators providing instructions that the scorers were to conduct their comparative evaluations independently.

Loop's Exception No. 5 is denied.

Ruling on Loop's Exception No. 6

Loop's takes exception to the finding of fact in paragraph 26 of the Recommended Order in its entirety, in which the ALJ describes the scoring process that was conducted by OCU along with the applicants' total aggregate scores. Loop's argues that no applicant had a score because the hearing before the ALJ is a de novo proceeding. Loop's argues that OCU's scoring method had no presumption of correctness and also argues that the scorecards from the two scorers who did not testify, Ms. Nelson and Ms. Hutson, OCU exhibits 16-21, were hearsay erroneously used by the ALJ to make a finding of fact.

Loop's argument that no applicant had a score due to this being a de novo proceeding is inconsistent with chapter 2016-123, section 3(2), Laws of Florida, which states:

> If an organization that does not meet the criteria of subsection (1) receives a final determination from the Division of Administrative Hearings, the Department of Health, or a court of competent jurisdiction that it was entitled to be a dispensing organization under s. 381.986, Florida Statutes, and applicable rules, such organization and an organization that meets the criteria of subsection (1) shall both be dispensing organizations in the same region.

Loop's had the burden to show that it was entitled to be a dispensing organization under section 381.986, Florida Statutes, and applicable rules. Those rules describe the scoring methodology and the evaluators who could conduct the scoring. *See* Fla. Admin. Code R. 64-4.002.

The ALJ's description of the OCU's scoring process is based on competent substantial evidence including the testimony of Christian Bax, the Director of OCU, and the scorecards themselves, which fall into the business record hearsay exception described in section 90.803(6), Florida Statutes.

Loop's exception number 6 is denied.

Ruling on Loop's Exception No. 7

Loop's takes exception to the findings of fact in the following portion of paragraph 27 of the Recommended Order which states:

> The findings and conclusions reached by the other two scorers were not addressed. Nor were principals from the competing applicants called in order to compare or discuss their applications. Thus, Loop's attempted to prove that its application was superior by affirming the appropriateness of its own application, superficially presenting portions of the competing applications, and showing that only one of three scorers deemed its application superior. This is not a legitimate or appropriate comparison.

Loop's argues that the ALJ's conclusion that "[t]his is not a legitimate or appropriate comparison" was a rejection of the testimony of Mr. Bax, arguing that an administrative law judge is not free to ignore or reject unrebutted expert testimony. Loop's also cites to its own expert witnesses who testified about portions of Loop's application compared to other two competing applicants.

In review of the entire record, Mr. Bax was not an expert witness. The competent substantial evidence supports the findings of fact in this paragraph. Under Florida Administrative Code Rule 64-4.002(5)(a), the applications were required to be scored by

three evaluators, the Director of the Office of Compassionate Use (Mr. Bax), a member of the Drug Policy Advisory Council appointed by the State Surgeon General (Ms. Nelson), and a Certified Public Accountant appointed by the State Surgeon General (Ms. Hutson). Loop's only called one evaluator, Mr. Bax, and did not call Ms. Nelson or Ms. Hutson. Likewise, Loop's did not call principals from the other two applicants in order to discuss their applications. Loop's experts only compared limited portions of the competing applications with that of Loop's.

Loop's Exception No. 7 is denied.

Ruling on Loop's Exception No. 8

Loop's takes exception to the finding of fact in paragraph 29 of the Recommended Order which states, "San Felasco proposes to cultivate a strain known as Anovia Medical; Chestnut Hill plans to grow one known as Green Solutions. Other than its notoriety, there was no competent evidence that Charlotte's Web is superior to any other strain."

In review of the entire record, there is no competent substantial evidence that Anovia Medical and Green Solutions are cannabis strains. The testimony and the applications indicate that Novia Medical is the proposed pharmaceutical division of Chestnut Hill and The Green Solution is an organization partnering with San Felasco.

Loop's takes exception to the finding of fact that "other than its notoriety, there was no competent evidence that Charlotte's Web is superior to any other strain." Loop's points to the testimony of Mr. Bax who indicated he believed Charlotte's Web was a good strain of cannabis and efficacious.

There is competent substantial evidence supporting the ALJ's findings. Mr. Bax also testified that as long as the cannabis strain met the low-THC, high-CBD requirements of the statute, they would be considered equal. Loop's witness Joel Stanley testified that

other strains were effective, described Charlotte's Web as a brand and testified that patient response to cannabis products can be very individualized.

Loop's Exception No. 8 is denied in part and granted in part. Paragraph 29 is modified to omit the reference to Anovia Medical and Green Solutions.

Ruling on Loop's Exception No. 9

Loop's takes exception to the finding of fact in paragraph 31 of the Recommended Order that states, "The suggestion that Loop's could comply with the cultivation requirement better than the other two applicants is purely speculative."

Loop's also takes exception to the finding of fact in paragraph 31 that states:

> Both [Chestnut Hill and San Felasco] are operating registered nurseries within the State, even if they are not currently growing marijuana. However, each of those applicants presumably submitted plans for cultivating medical marijuana in some fashion. No competent evidence was presented to infer that the proposals of Chestnut Hill and/or San Felasco were inferior to Loop's, or, conversely, that the Loop's proposal was superior to those applications.

Loop's argues that Mr. Bax gave Loop's a higher score than the other two applicants, and that Loop's presented expert testimony indicating that portions of Loop's application was superior to that of Chestnut Hill and San Felasco. As stated in the Ruling on Loop's Exception No. 7, Loop's did not make an appropriate comparison. There is competent substantial evidence to support the ALJ's finding.

Loop's Exception No. 9 is denied.

Ruling on Loop's Exception No. 10

Loop's takes exception to the findings of fact in paragraph 32 of the Recommended Order that states:

> There were, however, some glitches pointed out in the Loop's plan, e.g., its 24-hour on-site security was to be provided by a single individual who, presumably, would need to sleep sometimes. But again, there is no evidence

> that the security plans proposed by the other two applicants are in any way inferior.

Loop's argues that expert testimony established the security proposed by Loop's application, including that 24-hour onsite security was a positive aspect of the Loop's application. In review of the entire record, there is no competent substantial evidence that the security plans proposed by Chestnut Hill and San Felasco were inferior to Loop's.

Loop's Exception No. 10 is denied.

Ruling on Loop's Exception No. 11

Loop's takes exception to the finding of fact in paragraph 33 of the Recommended Order. Paragraph 33 states:

> The same is true of the three applicants' ability to maintain accountability of their raw materials and finished products. Loop's had a good plan for doing so, but did not specifically demonstrate how its plan was superior to the others.

Loop's argues that it proved its ability and plan to maintain accountability of its raw materials and finished products, and that the specifics of how San Felasco and Chestnut Hill planned to account for raw materials and finished products was not established.

In review of the entire record, there is competent substantial evidence supporting the ALJ's finding. Loop's acknowledges that it did not establish how San Felasco and how Chestnut Hill planned to account for raw materials and finished products.

Loop's exception No. 11 is denied.

Ruling on Loop's Exception No. 12

Loop's takes exception to the findings of fact found in portions of paragraph 34 which state:

> However, there is no requirement that a DO dispense its product statewide, only that each DO must cover its designated region, in this case the Northeast Region. Thus, the fact that the other applicants did not propose as wide a distribution of its product as Loop's is not consequential. . . . It is clear Loop's intends to distribute its product on a wider scale than San Felasco or Chestnut Hill, but there is no requirement for doing so. . . . The statutory and rule provisions relating to dispensing of the cannabis product does not say that ability to distribute more product is necessarily better. Further, Loop's did not explain how its product would successfully compete with the DOs approved in the other regions around the State. So, in total, Loop's did not prove that its distribution plan was superior to the other applicants' plans.

Loop's takes exception to the finding of fact in paragraph 35 that states, "Each applicant's proposal seems adequate for their projected distribution of medical marijuana."

There is competent substantial evidence supporting the ALJ's findings of fact in these paragraphs and Loop's does not appear to be disputing any of the factual findings. Rather Loop's argues that the ALJ errored in his conclusion of law that there is no requirement that a DO distribute statewide. Loop's cites to section 381.986(5)(b)4., Florida Statutes and Rule 64-4.002(2)(c)11. of the Florida Administrative Code and argues that the finding that a DO only cover its designated region is not supported by these laws.

Section 381.986, Florida Statutes, is a statute over which the Department has substantive jurisdiction, being the agency tasked with the licensing and regulation of low-THC cannabis and medical marijuana DOs. The law provides for the establishment of five DOs to ensure reasonable statewide accessibility and availability, "one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida and southwest Florida." Section 381.986(5)(b), Florida Statutes. Section 381.986(5)(b)4., Florida Statutes, requires each applicant to demonstrate "[a]n

infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department." (Emphasis added).

Florida Administrative Code Rule 64-4.002(2)(c)11. requires the applicant to describe the methods proposed for dispensing the low-THC derivative products and does not require the applicant to dispense statewide.

Neither the statute nor the rule indicate that it is preferable to dispense statewide. The ALJ's conclusion is correct that a DO must provide a plan to cover the patients in its region and may, but is not required to, dispense statewide.

Loop's Exception No. 12 is denied.

Ruling on Loop's Exception No. 13

Loop's takes exception to findings of fact in paragraphs 36, 37 and 38-43 related to Loop's financial statements. In its exceptions, Loop's indicated that the disputed portions were those portions underlined in Loop's exceptions. Loop's did not underline any portion of paragraph 37 and therefore did not clearly identify the disputed portion of that paragraph as required by section 120.57(1)(k), Florida Statutes.

Loop's takes exception to the sentence in paragraph 36 which states, "Loop's own financial ability to operate is somewhat suspect due to the conditional nature of its audited financial statements." There is competent substantial evidence to support the ALJ's finding, specifically the testimony of Mr. Hand who conducted the audit and who issued a qualified opinion because he was unable to count inventory, a substantial portion of Loop's assets.

Loop's takes exception to the sentence in paragraph 38 which states, "The amount of time [Steven Hand] had to prepare the statement was probably insufficient, but he did the best he could in that time." There is competent substantial evidence to support the

ALJ's finding. All three CPAs who testified commented on the short timeframe for the audit. Mr. Hand testified that completing the audit in approximately a week was "very, very quick for an audit." Mr. Rampell testified that Mr. Hand did not have a lot of time to conduct the audit. Mr. Hevia testified that the audit was "doomed from the beginning" due to the limited time.

Loop's takes exception to the sentence in paragraph 39 which states, "The audited financial statement he issued did not have the requisite headings required by [Generally Accepted Auditing Standards]." There is competent substantial evidence to support the ALJ's finding. All three CPA's who testified indicated that the Generally Accepted Auditing Standards ("GAAS") required that the audit report have headings.

Loop's takes exception to the sentence in paragraph 40 which states, "The verification of accounts receivable was done by Loop's, not by the CPA, another violation of auditing guidelines. Thus, Mr. Hand issued a 'qualified' opinion, i.e., a much weaker opinion than those submitted by the competing applicants." There is competent substantial evidence to support the ALJ's finding. Mr. Hand testified that Loop's sent out the letters to verify accounts receivable. The GAAS standards and the testimony of Mr. Hevia indicated that the CPA must send out the verification requests. All three CPA experts testified as to the hierarchy of audit opinions.

Loop's takes exception to the finding of fact in paragraph 41 stating, "There is no evidence of record as to the validity or appropriateness of the audited financial statement submitted by San Felasco in its application. Thus, no comparison of information contained therein can be made." There is competent substantial evidence to support the ALJ's finding. Although Loop's presented witnesses who compared limited aspects of the applications, Loop's did not compare all aspects of the applications.

Loop's takes exception to the finding of fact in paragraph 42 stating, "But, ultimately, the auditors were able to issue a valid audited financial statement for [Chestnut Hill]." Loop's disputes this portion of paragraph 42, but does not include any appropriate and specific citations to the record as required by Section 120.57(1)(k), Florida Statutes.

Loop's takes exception to the finding of fact in paragraph 43 stating, "But no discreet comparison between Loop's financials and those of the competing applicants was presented at final hearing." Loop's argues that the ALJ disregarded competent substantial evidence to reach this conclusion. As stated above, the comparisons were limited in scope. It is solely within the prerogative of the ALJ as the finder of fact to weigh the evidence and judge the credibility of witnesses. *See Strickland v. A & M University,* 799 So. 2d 276, 278 (Fla. 1st DCA 2001).

Loop's Exception No. 13 is denied.

Ruling on Loop's Exception No. 14

Loop's takes exception to the conclusion of law in paragraph 53 of the Recommended Order which states, "This is the first proceeding under the 2016 Law, which generally establishes the parameters for an applicant such as Loop's to obtain approval of its initially denied application." Loop's argues that the law passed in 2014 established the original criteria for approving DO applications.

Although the 2014 law, codified in section 381.986, Florida Statutes, established the original criteria applicants were required to meet, the 2016 law, chapter 2016-123, Laws of Florida, established the parameters for approving an applicant that was seeking reversal of the OCU's initial decision to deny the application.

Loop's Exception No. 14 is denied.

Ruling on Loop's Exception No. 15

Loop's takes exception to the conclusion of law in paragraph 55 of the Recommended Order which states:

> As set forth in the Findings of Fact above, Loop's did not provide comparative proof that its application satisfied those criteria better than Chestnut Hill or San Felasco such that its application should have been approved. . . . By the same token, there was no competent evidence to prove that those two applicants did not satisfy the criteria, or that their applications were qualitatively inferior to the Loop's application. It was Loop's duty to show how its application was superior to the other applicants. It was Loop's duty to present whatever evidence about San Felasco and Chestnut Hill was necessary to make that comparison. Loop's failed to do so.

Loop's argues that it presented competent substantial evidence that its application was superior and argued that the ALJ was not free to disregard or reject expert testimony.

The ALJ was correct that Loop's had the burden to demonstrate that its application was superior to that of San Felasco and Chestnut Hill in accordance with section 381.986, Florida Statutes, and the applicable rules, specifically Chapter 64-4 of the Florida Administrative Code. Loop's failed to meet its burden.

Loop's Exception No. 15 is denied.

RULING ON OCU'S EXCEPTIONS

Ruling on OCU's Exception No. 1

The Department takes exception to the finding of fact in paragraph 7 which states, "It is unclear why the Department takes such an aggressive adversarial stance against Loop's in this proceeding." OCU argues that this comment is not a finding of fact or conclusion of law, but a gratuitous comment on OCU's litigation posture.

The statement concerning the litigation posture is not a finding of fact based on competent substantial evidence related to Loop's application.

OCU's Exception No. 1 is granted and the sentence about the OCU's litigation posture is omitted.

Ruling on OCU's Exception No. 2

OCU takes exception to the finding of fact in paragraph 11 of the Recommended Order which states:

> Loop's expressed its intention to use a subsidiary corporation or division (Loop's Dispensaries, LLC) to operate the dispensing functions of its proposed project, if approved. . . . OCU's contention that use of the LLC constitutes a 'material misrepresentation' in the application is unfounded. Loop's was overt and transparent in this contingency. Further, no mention was made of this perceived misrepresentation in OCU's denial letter following review of the Loop's application.

In review of the entire record, there is no competence substantial evidence to support the statement that "Loop's was overt and transparent in this contingency." Loop's application identified Loop's Dispensaries as a division of Loop's Nursery, Inc. The application also included an organizational chart describing the management of this division. The testimony of David Loop indicated that rather than a division, Loop's Dispensaries LLC, would actually be a separate entity with equity owners that had not been revealed in the application. There is no evidence indicating that this information was provided to OCU prior to this proceeding.

Likewise, there is no evidence establishing that OCU was aware of Loop's intent to use a separate company for dispensing when OCU issued its denial letter to Loop's.

The remaining portions of paragraph 11 are supported by competent substantial evidence, specifically the testimony of David Loop.

OCU's Exception No. 2 is granted in part and denied in part. Paragraph 11 is modified to omit the sentence "Loop's was overt and transparent in this contingency" and the last sentence is modified to state, "No mention was made of this perceived

misrepresentation in OCU's denial letter following review of the Loop's application as OCU had no knowledge that Loop's intended Loop's Dispensaries to be a separate entity."

Ruling on OCU's Exception No. 3

OCU takes exception to the statement in paragraph 12 of the Recommended Order which outlines the three basic statutory criteria which must be met by a DO. OCU argues that this information is derived from the application form, incorporated by Florida Administrative Code Rule 64-4.002, and that the statement is actually a conclusion of law over which the Department has substantive jurisdiction.

OCU argues that the ALJ's statement "a) Possess a valid certificate of registration issued by DACS" should be modified to read "a) Possess a valid certificate of registration issued by DACS that is issued for the cultivation of more than 400,000 plants." OCU argues that the ALJ's statement "c) Prove continuous operation as a nursery for at least 30 continuous years" should be modified to read "Prove continuous operation as a registered nursery in Florida for at least 30 continuous years."

The ALJ has merely recited the law which is appropriate as a finding of fact; however, OCU is correct that the recitation is not entirely accurate and complete. Although referenced in the application form, these requirements are more completely described in section 381.986(5)(b)1., Florida Statutes.

OCU's Exception No. 3 is granted and paragraph 12 is modified to accurately reflect the language in the statute as follows:

> The application form for applying to be a DO identifies a number of statutory and rule requirements which must be met, including three basic criteria: a) Possess a valid certification of registration issued by DACS pursuant to section 581.131 that is issued for the cultivation of more than 400,000 plants; b) Show that the nursery is operated by a Florida nurseryman as described in section 581.011; and c) Prove operation as a registered nursery in Florida for at least 30 continuous years.

Ruling on OCU's Exception No. 4

OCU takes exception to the statement in paragraph 13 of the Recommended Order which states that "[t]hese subparts are further broken down in sub-subparts and weights or percentages are assigned to each of those." OCU argues that Florida Administrative Code Rule 64-4.002 and the application form only divide the subparts of Cultivation, Processing and Dispensing into sub-subparts to which a weight or percentage is assigned.

Although OCU is technically correct that only the Cultivation, Processing and Dispensing portions of the application are further broken down into sub-subparts to which a weight is assigned, the ALJ does not make any conclusion of law that modifies the scoring percentages. Rather, the ALJ's statement is more appropriately construed as a generalized statement which accurately applies to the Cultivation, Processing and Dispensing portions which account for 75% of the application score. As a generalized statement, rather than a detailed description, there is competent substantial evidence to support the finding.

OCU's Exception No. 4 is denied.

Ruling on OCU's Exception No. 5

OCU takes exception to the finding of fact in paragraph 14 indicating that Loop's met the minimum requirements to be a DO and that Loop's is generally stable and meets minimal financial requirements. OCU argues that Loop's did not establish that all its owners and managers passed a level 2 background check and that Loop's failed to meet the financial requirements.

In review of the entire record, there is competent substantial evidence to support the ALJ's finding. Although OCU provided testimony that brought into question whether

Loop's met these statutory requirements, Loop's also brought forward testimony and evidence in support of the finding that Loop's met the minimum requirements. It is solely within the prerogative of the ALJ as the finder of fact to weigh the evidence and judge the credibility of witnesses. *See Strickland,* 799 So. 2d at 278.

OCU's Exception No. 5 is denied.

Ruling on OCU's Exception No. 6

OCU takes exception to the statement in paragraph 15, endnote 1 that states, "This case is akin to the comparative review done by an ALJ in certificate of need cases." OCU argues that no evidence was presented indicating how a comparative review was done in a certificate of need case.

In review of the entire record, there is no evidence presented concerning certificate of need cases; therefore, there is no competent substantial evidence to support this finding.

OCU also takes exception to the statement in paragraph 15, endnote 1 indicating that "all the evidence concerning [San Felasco and Chestnut Hill's] applications was essentially uncorroborated hearsay." OCU argues that Mr. Bax, testified concerning the applications and his testimony is not uncorroborated hearsay.

If the ALJ's statement in the footnote is intended to be a conclusion of law, the Department does not have substantive jurisdiction over evidentiary rulings found by an ALJ during a hearing. *See Barfield v. Dep't of Health,* 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001). Because the Department does not have substantive jurisdiction over the rules of evidence, this conclusion of law cannot be modified in this Final Order; however, OCU is correct. The applications are records of regularly conducted business activity, a hearsay exception under section 90.803(6), Florida Statutes. Applications that form the basis for

the Department's licensing determinations, and about which Mr. Bax testified, are not uncorroborated hearsay. OCU's exception is denied only because the Department does not have the authority to reverse the ALJ's erroneous conclusion. *See Barfield* at 1013.

OCU's Exception No. 6 is granted and paragraph 15, endnote 1 is modified to omit the statement "This case is akin to the comparative review done by an ALJ in certificate of need cases."

Ruling on OCU's Exception No. 7

OCU takes exception to the portion of paragraph 17 which states:

> OCU suggested that some individuals who may be involved with the Loop's operation, if approved, should have undergone level 2 background screening. There is no persuasive evidence, however, that such persons were 'owners or managers' as contemplated by the statute and rule.

OCU also takes exception to the finding in paragraph 14 which states, "It is clear Loop's at least minimally meets the requirements set forth in the statute and rule and identified within the application."

With regard to paragraph 17, OCU correctly argues that section 381.986(5)(b)6., Florida Statutes, required each applicant to demonstrate that all of its owners and managers had been fingerprinted and successfully passed a level 2 background screening. OCU also correctly argues that the definition of manager, under the Rule 64-4.001(13) of the Florida Administrative Code is a conclusion of law over which the Department has substantive jurisdiction. OCU argues that the evidence presented at the hearing indicated that Mr. Stanley and the owners of Ray of Hope 4 Florida were managers as defined by the rule and were subject to the background screening requirement. Because Loop's did not have all of its owners and managers submit to the required background screening,

OCU argues, OCU takes exception to the ALJ's finding in paragraph 14 that Loop's at least minimally met the requirements set forth in the statute and rule.

The ALJ's findings in both paragraphs 17 and 14 appear to mix both findings of fact and conclusions of law; however, it is unclear as to which facts the ALJ has based his finding concerning owners and managers. There was competent substantial evidence presented through David Loop's testimony that Mr. Loop was in charge of Loop's Nursery, Inc. There was also testimony from both Mr. Loop and Joel Stanley that Loop's had a licensing agreement with the Stanley Brothers/CWB Holdings, Inc. that permitted Loop's, if licensed, to cultivate and process the Charlotte's Web brand of low-THC cannabis, on the condition Loop's complied with the Stanley Brothers/CWB Holdings' standard operating procedures.

Rule 64-4.001(13) of the Florida Administrative Code defines manager as "[a]ny person with the authority to exercise operational direction or management of the Dispensing Organization or the authority to supervise any employee of the Dispensing Organization." Thus, a person who has been given the authority to institute operational procedures, modify operational procedures or require compliance with operational procedures is exercising operational direction and is a manager under the rule. Such a person must be fingerprinted and successfully pass a level 2 background screening.

It is within the purview of the ALJ to judge the credibility of the witnesses. However, there was no express factual finding on the question whether or not Stanley Brothers/CWB Holdings' had the authority to exercise operational direction or management of the Dispensing Organization or the authority to supervise any employee of the Dispensing Organization. Therefore, OCU's exception to any factual finding is denied, as there was no express factual finding. The exception is granted to the extent

that the ALJ is implying any different definition of manager than that which is described in Florida Administrative Code Rule 64-4.001(13), as interpreted by the Department.

OCU's Exception No. 7 is denied in part and granted in part only to the extent that the ALJ implies a conclusion of law contrary to the definition of manager being any person with the authority to exercise operational direction or management of the DO or the authority to supervise any employee of the DO.

Ruling on OCU's Exception No. 8

OCU takes exception to the finding of fact in paragraph 21 which states "OCU interpreted the statutory requirement in section 381.986(5)(b)1. to mean that if the applicant operated a registered nursery (rather than itself being a registered nursery), that would satisfy the requirement. . . ."

OCU argues that there is no competent substantial evidence to support that the ALJ's statement is an accurate reflection of the OCU's interpretation of the statute. In review of the entire record, the only reference to the OCU's interpretation is testimony indicating that OCU interpreted section 381.986(5)(b)1., Florida Statutes, to mean if the applicant "operated as a registered nursery" that was registered by DACS for at least 30 continuous years. Section 381.986(5)(b)1., Florida Statutes, also states "operated as a registered nursery."

OCU's Exception No. 8 is granted and paragraph 21 is modified to state "operated as a registered nursery" as opposed to "operated a registered nursery."

Ruling on OCU's Exception No. 9

OCU takes exception to the finding of fact in paragraph 23 that "applicants were to submit their applications and a $60,000 filing fee . . . ." OCU argues that the filing fee, as set forth in Florida Administrative Code Rule 64-4.002(1) is $60,036.

OCU also takes exception to the finding of fact in paragraph 23 stating:

> In the case of Loop's, Bax noted that Loop's had not provided proof of operating a registered nursery for 30 continuous years and the financial statements provided in the application had not been audited. Loop's timely provided the missing items requested by the Department.

OCU argues that the statement should be modified to comport with section 381.985(5)(b)1., Florida Statutes, and state "proof of operating as a registered nursery" and should also state "had not been audited in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant, licensed pursuant to chapter 473, Florida Statutes."

OCU also takes exception to the statement that Loop's timely provided the missing items, arguing that the competent substantial evidence indicated that the financial statements were not audited in accordance with GAAS.

OCU is correct that Florida Administrative Code Rule 64-4.002(1) does state $60,036, section 381.985(5)(b)1., Florida Statutes, does state "as a registered nursery," and that Florida Administrative Code Rule 64-4.001(6) defines certified financials as financial statements that have been audited in accordance with GAAS. The ALJ's statements, however, are generalized references to the fee and requirements under the statutes and rules. The lack of exact accuracy in these statements does not change the statutes or rules in question and the context of the findings indicate the ALJ intended "audited" to mean financial statements audited in accordance with GAAS.

There is competent substantial evidence in the testimony of Christian Bax that Loop's provided the missing items and Loop's application was considered complete and was substantively reviewed. Whether the audited statements were actually in compliance

with GAAS was one of the disputed issues in this matter to which the ALJ made further findings.

OCU's Exception No. 9 is denied.

Ruling on OCU's Exception No. 10

OCU takes exception to the finding of fact in paragraph 26 that the evaluators "compiled the scores in a spreadsheet" arguing there was no competent substantial evidence that the evaluators or scorers compiled the scores in a spreadsheet, rather that the Department's Torrece Porter compiled the scores in a spreadsheet.

In review of the entire record, there is no competent substantial evidence that indicates the three scorers compiled the scores in a spreadsheet, but rather that Department employee Torrece Porter compiled the separate scores into a spreadsheet.

OCU also takes exception to the statement in paragraph 26 referencing ALJ Van Laningham's Informational Order entered in a separate DOAH proceeding involving DO applicants. OCU argues that there is no competent substantial evidence supporting the statement and that the referenced Informational Order is not a legally recognized order or binding in any way. OCU also takes exception to the ALJ's reference in paragraph 47, endnote 3, to an Order Granting Ruskin's Motion in Limine entered by ALJ Van Laningham in a separate DOAH proceeding. OCU argues that there is no legal basis for referencing ALJ Van Laningham's orders that made findings contrary to that of this ALJ.

OCU is correct that the orders entered by ALJ Van Laningham do not have any precedential value. The fact that the ALJ referenced these orders with different opinions does not add any precedential value to the orders.

OCU's exception is granted in part and denied in part. The statement in paragraph 26 is corrected to indicate that Department employee Torrece Porter compiled the separate scores in a spreadsheet.

Ruling on OCU's Exception No. 11

OCU takes exception to the finding of fact in paragraph 27 that "[t]he findings and conclusions reached by the other two scorers were not addressed." OCU argues that the competent substantial evidence indicates that the other two scorecards were admitted into evidence and addressed by OCU's representative Christian Bax. OCU argues that the statement is more accurate to say that the "findings and conclusions reached by the other two scorers were not addressed by Loop's"

Mr. Bax did address the other two scorecards in the manner of authentication and compilation into the final score, but not as to the evaluator's specific findings and conclusions.

The OCU's Exception No. 11 is denied.

Ruling on OCU's Exception No. 12

OCU takes exception to the finding of fact in paragraph 29 that "San Felasco proposed to cultivate a strain known as Anovia Medical; Chestnut Hill plans to grow one known as Green Solutions." OCU argues that there is no competent substantial evidence to support the statement which is factually incorrect based on the evidence presented.

OCU's Exception No. 12 is granted and paragraph 29 is modified as stated in the Ruling on Loop's Exception No. 8.

Ruling on OCU's Exception No. 13

OCU takes exception to the finding of fact in paragraph 36 that "[i]n the area of financial ability Loop's cast some reasonable doubt as to the showing Chestnut Hill made

to satisfy this requirement." OCU also takes exception to the finding of fact in paragraph 42 which states: "Only the balance sheet on Chestnut Hill's financials was audited; the auditor issued a disclaimer as to the income statement portion of the financial report . . ." to the extent that the finding implies that Chestnut Hill lacked the ability to maintain operations for the duration of the two-year approval cycle. OCU argues that the ability to maintain operations for the duration of the two-year cycle is a matter of opinion and an ultimate conclusion within the Department's purview. OCU also argued that the term "reasonable doubt" has no meaning in this proceeding.

OCU also takes exception to the finding in paragraph 36 that "Loop's own financial ability to operate is somewhat suspect due to the conditional nature of its audited financial statements" to the extent that the finding limits the reasons Loop's ability to maintain operations for the duration of the two-year approval cycle is suspect. OCU argues that Loop's ability to meet the statutory requirement of demonstrating financial ability was missing and that Loop's application was unreliable.

OCU is reading into paragraph 36 implied findings that are simply not there. The ALJ's statements, taken at face value, are simply statements about the evidence presented, although the ALJ made a poor choice in using the term "reasonable doubt" which is clearly not intended as a burden of proof in this context.

Because the Department finds that paragraph 42 does not contain a conclusion of law or finding of fact, OCU's Exception No. 13 is denied.

Ruling on OCU's Exception No. 14

OCU takes exception to the finding of fact in paragraph 37 stating that OCU "asked Loop's to submit an audited financial statement . . . , and Loop's complied with that request." OCU also takes exception to the finding of fact in paragraph 39 which states

that "Loop's financial statement was generally acceptable as to content. Again, failure to include the headings is a violation of GAAS, but the violation seems minimal in this context."

First, OCU argues that the statement in paragraph 37 should be modified to indicate that OCU notified Loop's that it failed to submit a financial statement audited in accordance with GAAS by a Certified Public Accountant. The context of the ALJ's finding, however, indicates that the ALJ's reference to "audited" financial statement is meant as a financial statement audited by a CPA in accordance with GAAS.

Second, OCU argues that the competent substantial evidence demonstrated that Loop's finances were not audited in accordance with GAAS.

Third, OCU argues that the competent substantial evidence indicates that no matter how minimal a violation may appear, a violation of GAAS is still a violation.

There is competent substantial evidence to support the ALJ's finding. Testimony was elicited from three expert CPA's, two of which considered the violation minimal and one which did not. It is solely within the prerogative of the ALJ as the finder of fact to weigh the evidence and judge the credibility of witnesses. *See Strickland,* 799 So. 2d at 278.

OCU's Exception No. 14 is denied.

Ruling on OCU's Exception No. 15

OCU takes exception to the finding in paragraph 45 that "[i]t is difficult to conceive how such a beneficial medication could be objected to by some uninformed persons or groups." OCU argues that there is no competent substantial evidence supporting this finding of fact and the finding reflects sentiment of statewide policy and argues that the

Division of Administrative Hearings cannot write in a Recommended Order policy for the legislature that is not found in the statute.

First, as to competent substantial evidence, there was testimony presented reflecting how low-THC cannabis has been effective for some children with severe intractable seizures and that the medication can be difficult to obtain due to its illegality on the federal level. Thus, there was competent substantial evidence presented that the medication is beneficial and is objected to by some.

Second, the fact that the ALJ expressed an opinion finding it difficult to conceive that some persons or groups would object to the use of low-THC cannabis does not have the effect of setting policy. It is merely dicta, if even that, and does not have any impact on this matter or on the legislature's authority.

The OCU's Exception No. 15 is denied.

Ruling on OCU's Exception No. 16

OCU takes exception to the conclusion of law in paragraph 47 which states:

> The de novo standard has not been altered by section 381.986, or any other statute relating to the subject matter in this case. Thus, under section 120.57(1), the final hearing at DOAH was conducted "to formulate final agency action, not to review action taken earlier and preliminarily." J.D. v. Fla. Dep't of Child. & Fams., 114 So. 2d 1127, 1132 (Fla. 1st DCA 2013), (quoting McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977)).

OCU also takes exception to the conclusion of law in paragraph 52, endnote 4 which states:

> The Department continues to suggest that an "abuse of discretion" standard should be applied to the instant case. That argument is again rejected. Besides, no evidence was presented at final hearing directed to whether OCU abused its discretion; the evidence addressed whether the Loop's application was superior to the competing applicants.

OCU argues that under the standard set forth in chapter 2016-123, section 3(2), Laws of Florida, over which the Department has substantive jurisdiction, Loop's bore the burden of proving by a preponderance of the evidence that it, rather than San Felasco and Chestnut Hill, was entitled to approval by OCU when it reviewed and compared the applications to be the Northeast Region's DO under section 381.986, Florida Statutes, and the applicable rules. OCU also argues that the legislature granted the Department broad discretion in implementing section 381.986(5)(b), Florida Statutes, and that the APA does not compromise the Department's discretion. *See McDonald v. Dep't of Banking & Fin.*, 346 So. 2d 569, 577 (Fla. 1st DCA 1977). OCU asserts that the Department's discretion is paramount when dealing with facts that are increasingly a matter of opinion and infused with policy considerations. *See McDonald* at 579. OCU asserts that the laws governing this matter require a de novo review that is a backward-looking, retrospective review to determine if the Department abused its discretion.

To the extent that OCU is arguing that the ALJ must use an abuse of discretion standard, the exception is denied. The ALJ was correct that the standard of review was backward looking in nature, but remained a de novo review, to determine whether or not Loop's "was entitled to be a dispensing organization under s. 381.986, Florida Statutes, and applicable rules." Chapter 2016-123, section 3(2), Laws of Florida. The nature of this de novo review inherently incorporated the scoring methodology employed by the department.

To the extent that the ALJ failed to give deference to that scoring methodology, the scorecards and the fact that the scoring must be conducted by three very specific evaluators, OCU's exception is granted. Not only does the Department have substantive jurisdiction over Florida Administrative Code Chapter 64-4, the rules have the force of

law and are incorporated into chapter 2016-123, section 3(2), Laws of Florida. No contrary scoring method can be used.

Chapter 2016-123, section 3(2), Laws of Florida, states:

> If an organization that does not meet the criteria of subsection (1) receives a final determination from the Division of Administrative Hearings, the Department of Health, or a court of competent jurisdiction that it *was* entitled to be a dispensing organization *under s. 381.986, Florida Statutes, and applicable rules,* such organization and an organization that meets the criteria of subsection (1) shall both be dispensing organizations in the same region.

(Emphasis added).

The applicable rules are those found in Florida Administrative Code Chapter 64-4 and must be followed in determining whether Loop's was entitled to be a DO. Those rules include the following requirements:

The Department was required to substantively review, evaluate, and score applications using the *Scorecard for Low-THC Cannabis Dispensing Organization Selection* incorporated into the rule. *See* Fla. Admin. Code R. 64-4.002(5)(a).

Specific percentages of the score were required to be allocated to the various parts and subparts of the application. *See Application for Low-THC Cannabis Dispensing Organization Approval* incorporated in Fla. Admin. Code R. 64-4.002.

The rules required the Department's substantive review to be completed by three reviewers: the Director of the Office of Compassionate Use, a member of the Drug Policy Advisory Council appointed by the State Surgeon General, and a Certified Public Accountant appointed by the State Surgeon General. *See* Fla. Admin. Code R. 64-4.002(5)(a).

Scorecards from each reviewer were required to be combined to generate an aggregate score for each application. The applicant with the highest aggregate score in

each dispensing region shall be selected as the region's DO. *See* Fla. Admin. Code R. 64-4.002(5)(b).

OCU's Exception No. 16 is denied to the extent that it suggests an abuse of discretion review in this matter and granted to the extent that the ALJ was required to give deference to the scoring conducted in the manner required by Florida Administrative Code Rule 64-4.002.

Ruling on OCU's Exception No. 17

OCU takes exception to the conclusion of law in paragraph 53 that the statutory criteria to receive a DO license include "[f]ingerprinting and level 2 background screening for all owners and managers." The Department argues that to be accurate, the sentence should read "[f]ingerprinting and successfully passing a level 2 background screening for all owners and managers."

The statement in section 381.986(5)(b)6., Florida Statutes, is "[t]hat all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04." The conclusion of law should be modified to more accurately reflect the statutory language.

The OCU's Exception No. 17 is granted.

Ruling on OCU's Exception No. 18

OCU takes exception to the finding in paragraph 55 that "Loop's did prove definitively that it was approvable" arguing that the finding is contrary to the competent substantial evidence indicating that Loop's failed to meet the statutory requirements related to financial ability, related to all owners and managers successfully passing a background check and that Loop's failed to disclose that the dispensing organization was a separate and distinct entity than the applicant Loop's Nursery, Inc.

In review of the entire record, there is competent substantial evidence to support the ALJ's finding that Loop's application was approvable but that Loop's did not prove that its application was better than that of San Felasco or Chestnut Hill and therefore did not meet the burden of showing that it, rather than San Felasco or Chestnut Hill, should have been chosen as the dispensing organization for the Northeast Region.

The OCU's Exception No. 18 is denied.

FINDINGS OF FACT

1. The findings of fact set forth in paragraphs 1-6, 8-10, 13, 14, 15 (excluding endnote 1), 16-20, 22-28, and 30-45 of the Recommended Order, attached as Exhibit A, are adopted and incorporated by reference in this Final Order. The remaining paragraphs are adopted as modified in this Final Order.

2. Paragraph 7 is modified to omit the sentence, "It is unclear why the Department takes such an aggressive adversarial stance against Loop's in this proceeding." The remainder of the paragraph is adopted and incorporated by reference.

3. Paragraph 11 is modified to omit the sentence, "Loop's was overt and transparent in this contingency" and the final sentence is modified to state, "No mention was made of this perceived misrepresentation in OCU's denial letter following review of the Loop's application as OCU had no knowledge that Loop's intended Loop's Dispensaries to be a separate entity." The remainder of the paragraph is adopted and incorporated by reference.

4. Paragraph 12 is modified to read:

> 12. The application form for applying to be a DO identifies a number of statutory and rule requirements which must be met, including three basic criteria: a) Possess a valid certification of registration issued by DACS pursuant to section 581.131 that is issued for the cultivation of more than 400,000 plants; b) Show that the nursery is operated by a Florida

nurseryman as described in section 581.011; and c) Prove operation as a registered nursery in Florida for at least 30 continuous years. Loop's generally satisfies each of these criteria.

5. The finding of fact in paragraph 15, endnote 1 is modified to omit the statement "This case is akin to the comparative review done by an ALJ in certificate of need cases."

6. Paragraph 21 is modified to state "operated as a registered nursery" as opposed to "operated a registered nursery."

7. Paragraph 26 is modified to state that the Department employee Torrece Porter compiled the scores in a spreadsheet.

8. The finding of fact in paragraph 29 is modified to omit the sentence: "San Felasco plans to cultivate a strain known as Anovia Medical; Chestnut Hill plans to grow one known as Green Solutions."

CONCLUSIONS OF LAW

9. The conclusions of law set forth in paragraphs 46, 48-51, 52 (excluding endnote 4), and 54-56 of the Recommended Order are adopted and incorporated by reference in this Final Order. The remaining paragraphs are adopted as modified in this Final Order.

10. Any implied conclusion of law from paragraphs 14 and 17 concerning the definition of "manager" is modified to mean "any person with the authority to exercise operational direction or management of the DO or the authority to supervise any employee of the DO."

11. Paragraphs 47 and 52, endnote 4 are modified to reject any implied conclusion of law that no deference should be given to the scoring methodology required by Florida Administrative Code Rule 64-4.002.

12. Subsection (f) in paragraph 53 is modified to state "[f]ingerprinting and successfully passing a level 2 background screening for all owners and managers."

ORDER

Based on the foregoing, the Recommendation of the Administrative Law Judge is adopted in this Final Order. It is ordered that Loop's application to become a dispensing organization of low-THC cannabis in the Northeast Region is denied.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 5th day of January 2017.

Celeste M. Philip, MD, MPH
Surgeon General & Secretary
Florida Department of Health

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been sent by electronic mail and regular U.S. mail and/or by inter-office mail to each of the above-named persons this 5th day of January 2017.

Shannon Revels

Agency Clerk
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.