STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOOP’S NURSERY & GREENHOUSES, INC.,

Petitioner,

DOAH Case No. 15-7274

vs.

DEPARTMENT OF HEALTH, OFFICE OF COMPASSIONATE USE,

Respondent.

THE DEPARTMENT’S AMENDED PREHEARING STATEMENT
(amended solely to add exhibits attached to motions for official recognition)

In accordance with the Order of Pre-Hearing Instructions and the Order Denying Extension of Time for Filing Prehearing Stipulation, Respondent Florida Department of Health files its Prehearing Statement.

A. Concise statement of the nature of the controversy

This is a proceeding to determine whether Petitioner Loop’s Nursery & Greenhouses, Inc. — rather than Chestnut Hill Tree Farm, LLC, or San Felasco Nurseries, Inc. — was entitled to approval by the Department when the Department reviewed and compared all of the applications to be the Northeast Region’s dispensing organization of low-THC cannabis under section 381.986, Florida Statutes.

B. General statement of the Department’s position

The Department contends that Loop’s was not entitled to be the approved dispensing organization for the Northeast Region under section 381.986, Florida Statutes, and the applicable rules.
C. List of all exhibits (except for impeachment exhibits) to be offered at the hearing.

**DEPARTMENT'S EXHIBIT LIST:**

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<tr>
<th>#</th>
<th>Description</th>
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<td>1</td>
<td>Loop’s application (DOH00029947 to DOH00031304)</td>
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<td>2</td>
<td>Chestnut’s application (DOH00027875 to DOH00029201)</td>
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<td>3</td>
<td>San Felasco’s application (DOH00031305 to DOH00032155)</td>
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<td>San Felasco Operations Manual (DOH00032156 to DOH00032616)</td>
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<td>5</td>
<td>July 29, 2015, letter from DOH to Loop’s re: additional information (DOH00032660 to DOH00032661) (also Hand Dep. Ex. Res.-2)</td>
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<td>6</td>
<td>August 10, 2015, letter from Loop’s to DOH re: additional information (DOH00032662 to DOH00032689)</td>
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<td>July 29, 2015, letter from DOH to Chestnut re: additional information (DOH00032647 to DOH00032648)</td>
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<td>8</td>
<td>August 7, 2015, letter from Chestnut to DOH re: additional information (DOH00032649 to DOH00032653)</td>
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<td>9</td>
<td>July 29, 2015, letter from DOH to San Felasco re: additional information (DOH00032690)</td>
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<td>10</td>
<td>August 5, 2015, letter from San Felasco to DOH re: additional information (DOH00032691 to DOH00032695)</td>
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<td>11</td>
<td>San Felasco – DOH email chain re: background screening (August 5, 2015) (DOH00032696 to DOH00032699)</td>
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<td>12</td>
<td>September 24, 2015, letter from San Felasco to DOH re: background screening (DOH00032700 to DOH00032765)</td>
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<td>13</td>
<td>Chestnut scorecard – C. Bax (DOH00036200 to DOH00036207)</td>
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<td>Loop’s scorecard – C. Bax (DOH00036216 to DOH00036223)</td>
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<td>San Felasco scorecard – C. Bax (DOH00036224 to DOH00036231)</td>
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<td>16</td>
<td>Chestnut scorecard – E. Hutson (DOH00036408 to DOH00036415)</td>
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<td>17</td>
<td>Loop’s scorecard – E. Hutson (DOH00036424 to DOH00036431)</td>
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<td>18</td>
<td>San Felasco scorecard – E. Hutson (DOH00036432 to DOH00036439)</td>
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<td>19</td>
<td>Chestnut scorecard – P. Nelson (DOH00036616 to DOH00036623)</td>
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<td>20</td>
<td>Loop’s scorecard – P. Nelson (DOH00036632 to DOH00036639)</td>
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<td>21</td>
<td>San Felasco scorecard – P. Nelson (DOH00036640 to DOH00036647)</td>
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<td>22</td>
<td>November 23, 2015, letter from DOH to Loop’s re: application denial (DOH00033197 to DOH00033198)</td>
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<td>23</td>
<td>November 23, 2015, letter from DOH to Chestnut re: application approval (DOH00033192 to DOH00033194)</td>
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<td>24</td>
<td>November 23, 2015, letter from DOH to San Felasco re: application denial (DOH00033199 to DOH00033200)</td>
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<td>25</td>
<td>April 4, 2016, letter from DOH to San Felasco re: application approval (DOH00036816 to DOH00036818)</td>
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<tr>
<td>26</td>
<td>C. Bax’s Evaluator Notes re: Loop’s (DOH00033004 to DOH00033056)</td>
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<td>27</td>
<td>E. Hutson’s Evaluator Notes re: Loop’s (DOH00033057 to DOH00033083)</td>
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28 P. Nelson’s Evaluator Notes re: Loop’s (DOH00033084 to DOH00033091)
29 C. Bax’s Evaluator Notes re: Chestnut (DOH00032820 to DOH00032871)
30 E. Hutson’s Evaluator Notes re: Chestnut (DOH00032872 to DOH00032908)
31 P. Nelson’s Evaluator Notes re: Chestnut (DOH00032909 to DOH00032916)
32 C. Bax’s Evaluator Notes re: San Felasco (DOH00033092 to DOH00033149)
33 E. Hutson’s Evaluator Notes re: San Felasco (DOH00033150 to DOH00033181)
34 P. Nelson’s Evaluator Notes re: San Felasco (DOH00033182 to DOH00033189)
35 San Felasco to DOH re: response to OCU letter (08/06/15)
36 San Felasco to DOH re: background screening (1) (08/18/15)
37 San Felasco to DOH re: background screening (2) (08/18/15)
38 San Felasco to DOH re: background screening (3) (08/18/15)
39 San Felasco to DOH re: background screening (09/04/15)
40 San Felasco to DOH re: background screening (09/15/15)
41 Loop’s Financial “Review” as originally submitted with application (Hand Dep. Ex. Res.-4)
42 Loop’s Audited Financials (Hand Dep. Ex. Res.-3)
43 AU-C Section 200 – Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards (Hand Dep. Ex. Res.-7)
44 AU-C Section 700 – Forming an Opinion and Reporting on Financial Statements (Hand Dep. Ex. Res.-5)
46 Loop’s Audited Financials with handwriting (Hand Dep. Ex. Pet’r-2)
47 Composite Exhibit (Hand Dep. Ex. Res.-1) [documents deponent brought to deposition]
48 Final Order in Banks v. Department of Health [DOAH Case No. 15-7267, DOH Case No. 2015-0669]
49 Final Order in San Felasco Nurseries, Inc. v. Department of Health [DOAH Case No. 15-7268, DOH Case No. 2015-0670]
50 Final Order in Chestnut Tree Hill Farm, LLC v. Department of Health [DOAH Case No. 15-7276, DOH Case No. 2015-0690]
51 Deposition transcript of S. Mark Hand & Associates, P.A. & all exhibits
52 Deposition transcript of Holley Moseley & all exhibits
53 Deposition transcript of David Loop & all exhibits
54 Deposition transcript of Joel Stanley & all exhibits
55 Deposition transcript of Gregg Connor & all exhibits
56 Deposition transcripts of any other Loop’s witness & all exhibits
57 Scorecard Final spreadsheet
58 Department of State, Division of Corporations, Certification that Loop’s Dispensaries, LLC, is a limited liability company organized under the laws of the State of Florida, filed on August 18, 2014
59 Certified copy of Loop’s Dispensaries, LLC’s Articles of Organization, Certificate Designating Registered Agent and Street Address for Service of Process, and Articles of Amendment to Articles of Organization
60  Certified copy of Loop’s Dispensaries, LLC’s 2015 Florida Limited Liability Company Annual Report
61  Certified copy of Loop’s Dispensaries, LLC’s 2016 Florida Limited Liability Company Annual Report
62  Certified copy of Ray of Hope 4 Florida LLC filings with Florida Department of State
63  Certified copy of Loop’s Nursery & Greenhouses, Inc. filings with Florida Department of State
64  Impeachment exhibits
65  All exhibits listed by any other party

*The Department reserves the right to identify additional exhibits as more information is revealed during upcoming depositions.

The Department reserves all objections to Loop’s witness and exhibit lists.

D. List of the names and addresses of all witnesses (except for impeachment witnesses) to be called at the hearing by each party, with expert witnesses being so designated

1. Jon Moyle  
Moyle Law Firm  
118 North Gadsden Street  
Tallahassee, Florida 32301

2. Daniel J. Hevia, CPA  
c/o Vezina, Lawrence & Piscitelli  
413 East Park Avenue  
Tallahassee, Florida 32301

3. Christian Bax  
Florida Department of Health  
c/o Vezina, Lawrence & Piscitelli  
413 East Park Avenue  
Tallahassee, Florida 32301

4. Torrece Porter  
Florida Department of Health  
c/o Vezina, Lawrence & Piscitelli, P.A.  
413 East Park Avenue  
Tallahassee, Florida 32301

6. S. Mark Hand, per trial subpoena
   1301 Riverplace Boulevard, Suite 2400
   Jacksonville, Florida 32207

7. Rule 1.310(b)(6) Corporate Representative of San Felasco Nurseries, Inc., per trial subpoena, able to testify as to (1) San Felasco’s application (and supplemental submissions) and the contents thereof for a dispensing organization license in the Northeast Region and (2) San Felasco’s correspondence with the Department dated on or before November 23, 2015, regarding San Felasco’s application (and supplemental submissions) and the contents thereof
   c/o Foley & Lardner
   James A. McKee
   106 East College Avenue, Suite 900
   Tallahassee, Florida 32301

8. Rule 1.310(b)(6) Corporate Representative of Chestnut Hill Tree Farm, LLC, per trial subpoena, able to testify to (1) Chestnut’s application (and supplemental submissions) and the contents thereof for a dispensing organization license in the Northeast Region and (2) Chestnut’s correspondence with the Department dated on or before November 23, 2015, regarding Chestnut’s application (and supplemental submissions) and the contents thereof
   c/o The Lockwood Firm
   John M. Lockwood
   106 East College Avenue, Suite 810
   Tallahassee, Florida 32301

9. Peyton Moseley
   84 Shoreline Drive
   Gulf Breeze, Florida 32561

10. Any witnesses needed to authenticate exhibits

11. Impeachment witnesses

12. Every witness identified by Loop’s

13. All persons deposed in this proceeding

E. Concise statement of those facts which the Department contends are undisputed and will require no proof at hearing
1. In 2014, the Florida Legislature enacted the Compassionate Medical Cannabis Act, chapter 2014-157, Laws of Florida (codified in part at section 381.986, Florida Statutes (2015)).

2. The Department promulgated an application form, incorporated by reference in Florida Administrative Code Rule 64-4.002, to be used by applicants seeking approval as a dispensing organization.

3. Loop’s, San Felasco, and Chestnut timely submitted applications to become the dispensing organization in the Central region, as did a number of others.

4. Under Florida Administrative Code Rule 64-4.002(5)(a), the Department selected three persons to review and evaluate dispensing organization applications. The three persons were:
   a. Christian Bax, the Director of the Office of Compassionate Use, pursuant to Florida Administrative Code Rule 64-4.002(5)(a)1;
   b. Patricia Nelson, a Member of the Statewide Drug Policy Advisory Council appointed by the State Surgeon General, pursuant to Florida Administrative Code Rule 64-4.002(5)(a)2; and
   c. Ellyn Hutson, a Certified Public Accountant appointed by the State Surgeon General, pursuant to Florida Administrative Code Rule 64-4.002(5)(a)3.

5. The evaluators reviewed the applications pursuant to Florida Administrative Code Rule 64-4.002(5) and assigned scores to each applicant by applying Rule 64-4.002 and the scorecard.

6. San Felasco was the highest-scored applicant in the Northeast Region.

7. Chestnut was the second-highest-scored applicant in the Northeast Region.

8. Loop’s as the third-highest-scored applicant in the Northeast Region.

9. The Department notified Loop’s by letter dated November 23, 2015, that Loop’s was not the highest-scored applicant to be a dispensing organization in the Northeast Region and therefore Loop’s application was denied.

10. The Department notified San Felasco by letter dated November 23, 2015, that San Felasco’s application to be a dispensing organization in the Northeast Region was denied due to Daniel Banks’s failing to pass the level 2 background screening required by section 381.098(5)(b), Florida Statutes.

11. The Department notified Chestnut by letter dated November 23, 2015, that Chestnut was the highest-scored applicant to be a dispensing organization in the Northeast Region and therefore Chestnut was approved as the dispensing organization for the Northeast Region.
12. On December 14, 2015, Loop’s filed its Petition for Formal Administrative Proceedings, and the Department referred Loop’s petition to the Division of Administrative Hearings, which assigned case number 15-7274.

13. On March 25, 2016, House Bill 307 (CS for CS/CS/HB 307) and House Bill 1313 were signed by the Governor and became law, effective immediately, as chapter 2016-123, Laws of Florida.

14. On April 30, 2016, the Department issued a Final Order in Banks v. Department of Health [DOAH Case No. 15-7267, DOH Case No. 2015-0669].

15. The Department notified San Felasco by letter dated April 4, 2016, that San Felasco was approved as a dispensing organization for the Northeast Region pursuant to chapter 2016-123, Laws of Florida.

F. Concise statement of those issues of law that are not in dispute

1. The Department was directed by section 381.986, Florida Statutes (2015), to authorize the establishment of five dispensing organizations statewide, one each in five regions.

2. Under section 381.986(5)(b), Florida Statutes (2015), an applicant to be a dispensing organization must demonstrate that it:

   a. possesses a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to section 581.131, Florida Statutes, that is issued for the cultivation of more than 400,000 plants;

   b. is operated by a nurseryman as defined in section 581.011, Florida Statutes; and

   c. has been operated as a registered nursery in Florida for at least 30 continuous years.

3. Section 381.986(5)(b), Florida Statutes (2015), sets forth the seven criteria an applicant must demonstrate to become a dispensing organization:

   a. the technical and technological ability to cultivate and produce low-THC cannabis;

   b. the ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization;

   c. the ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances;
d. an infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the Department;

e. the financial ability to maintain operations for the duration of the 2-year approval cycle;

f. that all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to section 435.04, Florida Statutes; and

g. the employment of a medical director who is a physician licensed under chapter 458 or chapter 459, Florida Statutes, to supervise the dispensing organization’s activities.

4. The seven criteria set forth in section 381.986(5)(b), Florida Statutes, are carried over into the dispensing organization application form in the form of five categories and subcategories developed during the negotiated rulemaking process that helped develop Florida Administrative Code Rule 64-4.002.

5. Florida Administrative Code Rule 64-4.002(5) provides for three evaluators to independently review and score each application using a scorecard form that is incorporated by reference.

6. The application form set forth the scoring system that the evaluators would use to evaluate applications.

   a. 30% of an applicant’s total score was for the category “Cultivation,” which was composed of the subcategories “Technical Ability” (25% of the Cultivation score); “Infrastructure” (25% of the Cultivation score); “Premises, Resources, Personnel” (25% of the Cultivation score); and “Accountability” (25% of the Cultivation score).

   b. 30% of an applicant’s total score was for the category “Processing,” which was composed of the subcategories “Technical Ability” (25% of the Processing score); “Infrastructure” (25% of the Processing score); “Premises, Resources, Personnel” (25% of the Processing score); and “Accountability” (25% of the Processing score).

   c. 30% of an applicant’s total score was for the category “Dispensing,” which was composed of the subcategories “Technical Ability” (25% of the Dispensing score); “Infrastructure” (25% of the Dispensing score); “Premises, Resources, Personnel” (25% of the Dispensing score); and “Accountability” (25% of the Dispensing score).

   d. 5% of an applicant’s total score was for the category “Medical Director.”

   e. 20% of an applicant’s total score was for the category “Financials.”
7. Under each of the subcategories under Cultivation, Processing, and Dispensing and under both Medical Director and Financials, the application form further listed items that would help the evaluators assess each applicant’s ability to meet the seven criteria set forth in section 381.986(5)(b), Florida Statutes — items that the evaluators would not individually score but were to consider when assigning scores.

8. Under Florida Administrative Code Rule 64-4.002(5)(b), scores from each application’s scorecards would be combined to generate an aggregate score for each applicant, and the applicant with the highest aggregate score in each dispensing organization would be selected as the region’s dispensing organization.

9. Under Florida Administrative Code Rule 64-4.002(5), which became effective on June 17, 2015, applications for a dispensing organization license were due no later than 5:00 p.m. Eastern Time on July 8, 2015.

10. Sections 120.569 and 120.57, Florida Statutes, apply in this proceeding.

11. Section 381.986, Florida Statutes (2015), applies in this proceeding.


13. Florida Administrative Code Chapter 64-4 applies in this proceeding.

14. Loop’s bears the burden of proof in this proceeding, which is by a preponderance of the evidence.

G. Concise statement of those issues of fact which remain to be litigated

The Department contends that Loop’s has failed to allege material disputed facts.

H. Concise statement of those issues of law which remain for determination by the Administrative Law Judge

The Department contends that DOAH’s role is to resolve disputed facts, not disputed issues of law.

I. Concise statement of any disagreement as to the application of the rules of evidence

None known at this time.
J. List of all pending motions or other matters which require action by the Administrative Law Judge

1. Loop’s Motion to Compel Department of Health’s Production of Documents
2. Loop’s Motion to Compel Department of Health to Respond to Loop’s First Interrogatories
3. The Department’s Amended Motion in Limine Regarding Information Not Submitted to the Department Before November 23, 2015
4. The Department’s Motion in Limine Regarding Chestnut’s and San Felasco’s Current Dispensing Organization Operations
5. The Department’s Motion for Official Recognition of Final Orders
6. Loop’s Motion to Preclude Addition of Witnesses Not Previously Disclosed in Final Witness Lists, Absent Agreement of Parties or Leave of the Administrative Law Judge
7. The Department’s Motion for Official Recognition of Legislative History
8. The Department’s Motion for Official Recognition of Loop’s Dispensaries, LLC’s Filings with Florida Department of State

K. Estimate as to the length of time required for the hearing

Eight (8) days
CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was furnished on July 6, 2016, by email to:

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Robert A. Weiss
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Florida Bar No. 329401
Eduardo S. Lombard
Florida Bar No. 0153590
Megan S. Reynolds
Florida Bar No. 0042000

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