

Number of Licenses Awarded

DPS's number of licenses required based on "an analysis of other states compassionate-use programs and the number of patients in Texas with intractable epilepsy" (40 TexReg 6294)

9/18/15 DPS finds there will be 12 licensees based on its analysis [40 TexReg 6294-6301]

1/8/16 DPS does not address the number of licenses [41 TexReg 490-498]

10/28/16 Without explanation DPS changes its position that only 3 licenses will be issued. [41 Tex Reg 8520 -8540]

1/13/17 DPS references that only 3 licenses will be given out- no explanation for change from 12 to 3 [42 TexReg 46-60]

3/10/17 DPS answers several questions regarding "Production Limits" 42 TexReg 1148 but fails to address the change from 12 to 3 [42 TexReg 1139 -1150]

DPS violated the APA Pursuant to Tex. Gov't Code Sec. 2001.033

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE. (a) A state agency order finally adopting a rule must include:

- (1) a reasoned justification for the rule as adopted consisting solely of:
 - (A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption;
 - (B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and
 - (C) the reasons why the agency disagrees with party submissions and proposals;
- (2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and
- (3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Application Process

As to the issue of the Application Process and Review Process, DPA has an obligation pursuant to Tex. Gov't Code Sec. 2001.007 to provide clear information

Sec. 2001.007. CERTAIN EXPLANATORY INFORMATION MADE AVAILABLE THROUGH INTERNET. (a) A state agency shall make available through a generally accessible Internet site:

- (1) the text of its rules; and
- (2) any material, such as a letter, opinion, or compliance manual, that explains or interprets one or more of its rules and that the agency has issued for general distribution to persons affected by one or more of its rules.

(b) A state agency shall design the generally accessible Internet site so that a member of the public may send questions about the agency's rules to the agency electronically and receive responses to the questions from the agency electronically. If the agency's rules and the agency's explanatory and interpretive materials are made available at different Internet sites, both sites shall be designed in compliance with this subsection.

Without allowing for a Second Round of Applicants DPS will remain in Substantial Noncompliance with the APA making the CUP voidable

As to the issue of the ability to ensure statewide access, DPA has an obligation pursuant to Tex. Gov't Code Sec. 2001.035 to ensure statewide access or the CUP could be voidable.

Sec. 2001.035. SUBSTANTIAL COMPLIANCE REQUIREMENT; TIME LIMIT ON PROCEDURAL CHALLENGE. (a) A rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.0225 through 2001.034.

(b) A person must initiate a proceeding to contest a rule on the ground of noncompliance with the procedural requirements of Sections 2001.0225 through 2001.034 not later than the second anniversary of the effective date of the rule.

Applicants not issued a license are in administrative purgatory

The Applicants not awarded a license have not been issued a letter denying their application. Pursuant to the 37 TAC Sec. 12.15(d) "Upon denial the Applicant will have 30 days to request a hearing on the denial"

Yet if you go to the DPS website in the FAQ there is a statement that the review panel members' judgment is not subject to review.

FAQ DPS web site <http://www.dps.texas.gov/RSD/CUP/FAQs/index.htm>

FAQ Dispensing Organizations

12. Is there a review process by which an applicant can challenge or seek clarification of its scores?

Questions regarding the scoring criteria, the scoring matrix, the method of calculation, or perceived calculation errors, may be addressed by email

to <https://www.dps.texas.gov/rsd/contact/CUP.aspx>. The review panel members' judgments regarding the applications materials, reflected in their scores, are not subject to review.