

# Suit to halt Pa. marijuana program may cause 'pain, agony, & death'

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Adult cannabis plants grow inside a temperature controlled room at CannDESCENT's greenhouse in Desert Hot Springs, Calif.

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by **Sam Wood**, Staff Writer [@samwoodiii](#) | [samwood@phillynews.com](mailto:samwood@phillynews.com)

If Pennsylvania's medical marijuana program is delayed, "people will be forced to needlessly endure excruciating pain, agony, and, in some cases, death," according to [State Sen. Daylin Leach](#), prime sponsor of the [2016 law](#) legalizing medical cannabis in the state.

Leach (D., Montgomery) pleaded Monday morning with an aspiring medical marijuana grower to back down from a lawsuit that could potentially shut down the program before it even launches, although one attorney specializing in the field said that was unlikely.

Attorney [Seth Tipton](#) filed court papers late Friday in Commonwealth Court on behalf of Bethlehem's Keystone ReLeaf LLC seeking an injunction against the state [Department of Health](#). The company has asked the court to rescind all awarded permits and start again from scratch.

Tipton is a partner in the firm [Florio, Perrucci, Steinhardt & Fader](#). [Christian M. Perrucci](#), also a partner, is listed as [a managing member of Keystone ReLeaf](#).

Keystone ReLeaf unsuccessfully applied to win one of 12 permits, of the 25 allowed by law, awarded in June to grow and process marijuana in the state. In addition, it did not win one of 27 permits, of the 50 allowed by law, to open cannabis-product dispensaries. According to an attachment document buried in the suit, the company missed the state deadline by two days.

The state has said it will award a second round of permits sometime in 2018. The company is one of at least 140 failed applicants who have filed appeals challenging the state's awards.

Keystone ReLeaf maintains that the Department of Health botched the awards process, rendering it "arbitrary, capricious, and unreasonable." In doing so, the department's Office of Medical Marijuana broke the regulations it was ordered to uphold, the suit states.

In a letter, Leach begged attorney Tipton "not to seek such relief."

Citing statistics that suggest states with marijuana programs have a 25 percent lower rate of opioid-related deaths, Leach said a delay of only a few months would result in the deaths of "hundreds of your fellow citizens."

"I can't imagine a company such as Keystone ReLeaf ... would want to be responsible for harming patients in such a cruel way," Leach wrote.

Leach was joined by State Rep. Chris Rabb (D., Phila.), who noted, "There are legal remedies available to the company without seeking such a sweeping option that would harm so many vulnerable people."

Philadelphia attorneys who specialize in marijuana law voiced their concerns Monday about the suit. Similar complaints have held up deployment of medical marijuana programs in Maryland and Florida.

“We expected this to happen and hoped it would not,” said [Andrew Sacks](#) of [Sacks, Weston, Diamond LLC](#). “We have worked for 3½ years to see medicine in dispensaries, and lawyers trying to delay children with epilepsy from getting [the CBD](#) they need as soon as possible should think twice.” CBD is cannabidiol, the compound in cannabis that is believed to reduce seizures in children suffering from some forms of treatment-resistant epilepsy.

The suit claims the state selection process may have been “infected by bias and favoritism” because the Department of Health has kept the panelists who picked the permit winners secret, in violation of the state’s Right-to-Know law. A recent decision by the state Office of Open Records [ruled](#) that the panelists must be identified.

It also claims that regulations were arbitrarily waived for some applicants; that the department failed to conduct adequate criminal background checks; and that a yes-no question eligible for 50 points was graded on a sliding scale — scores varied from five to 41 points.

Keystone ReLeaf also criticized the state for awarding a permit [to a Minnesota company currently under criminal investigation](#) because two now-former executives illegally transported \$500,000 worth of hashish oil across state lines.

“No applicant understands how or why they scored a certain score in any category,” the suit states, “and when challenged by way of administrative appeal, [the Department of Health] has, to date, utterly refused to explain or defend its scoring decisions.”

The company offered as an example two applications it submitted for separate dispensary facilities. In 11 categories for which it submitted identical information, its answers received different scores.

Medical marijuana attorney [Steve Schain](#) of the [Hoban Law Group](#) said it was unlikely the Keystone ReLeaf suit would derail the Pennsylvania program.

“At best it’s premature, at worst flat wrong,” Schain said. “While raising many valid factual points, satisfying the ‘arbitrary, capricious, and unreasonable standard’ is a spectacularly difficult task. Based on their petition and pleading, I believe Keystone ReLeaf LLC has fallen short of establishing they’ve been irreparably harmed.”

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Re: Keystone ReLeaf LLC, vs. PA Department of Health

Dear Attorney Tipton:

As the original author and prime sponsor of Act 16 of 2016, Pennsylvania's medical marijuana law, I am writing an open letter to you today about the lawsuit you filed on behalf of Keystone ReLeaf LLC against the Pennsylvania Department of Health. According to the press reports and pleadings I have seen, you have asked the court for a number of remedies, including an order rescinding all previously awarded permits and a stay of the entire medical marijuana program. The purpose of this letter is to ask you, and your client, not to seek such relief.

As you know, federal law prohibits the importation of cannabis-derived medicines from other states. Thus, in most cases, people who need this medicine are desperately awaiting dispensaries, stocked with the medicines they need, to open. If the entire program is delayed, people will be forced to needlessly endure excruciating pain, agony, and, in some cases, death. As your client is surely aware, among the patients medical marijuana will help are small children with life-threatening seizure disorders, cancer patients who are too sick to continue their life-saving chemotherapy treatments, and veterans who, after serving our nation in combat and now suffering from Post-Traumatic Stress Disorder, are committing suicide at an alarming and historically unprecedented rate.

Further, I am sure you are familiar with the opioid crisis we are facing. In Pennsylvania, 13 people die every single day from a drug overdose. States with a medical marijuana protocol have a 25% lower rate of opioid-related deaths than states that do not. If our Commonwealth sees the same reductions that other states have seen, medical marijuana will save thousands of Pennsylvanians from a drug overdose. Even a statewide delay of only a few months will mean hundreds of your fellow citizens, who would have lived, will die. In addition, people suffering

#### HANDOUT

Letter from State Sen. Daylin Leach to Seth Tipton.

from Crohn's Disease and chronic pain will be forced to go without effective treatment, elongating and intensifying their misery.

I can't imagine a company such as Keystone ReLeaf, which took the time and effort to try to enter this space, presumably to help patients, would want to be responsible for harming patients in such a cruel way.

I wish to make it clear that I have no problem with you seeking relief from the courts if your client feels they have been wronged. I am, and always have been, completely agnostic regarding who the Department of Health awards licenses to. My only interest is in the best applicants prevailing, whoever they may be. Beyond that, I have had no preference on the outcome.

My commitment to neutrality extends to your lawsuit. That said, it is my belief that any unjust inconvenience or financial loss your client may have suffered can be remedied by a court in many ways short of shutting down the entire program. Because surely, no deprivation your client has sustained can be worth inflicting additional suffering on patients or literally costing them their lives.

Thus, I am asking you to speak to your client about amending their pleadings. Please, do not ask the court to enjoin every permittee in the state, most of whom did not even compete for a permit with your client and are not in any way relevant to your complaint. Please do not ask the court to sentence thousands of suffering Pennsylvanians to unnecessary pain and anguish.

Thank you for your attention to this matter.

Very Truly Yours,

  
Daylin B. Leach  
PA Senator - 17th District

Read more by **Sam Wood**

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<http://www.philly.com/philly/business/cannabis/suit-to-halt-pa-marijuana-program-may-cause-pain-agony-death-20170911.html>