

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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SAGUARO HEALING LLC, *Plaintiff/Appellant*,

*v.*

STATE OF ARIZONA, et al., *Defendants/Appellees*.

No. 1 CA-CV 18-0242  
FILED 3-28-2019

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Appeal from the Superior Court in Maricopa County  
No. CV 2017-054686  
The Honorable John R. Hannah Jr., Judge

**AFFIRMED**

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COUNSEL

Clark Hill PLC, Scottsdale  
By Sean M. Carroll, Andrew B. Turk, Christopher T. Curran  
*Counsel for Plaintiff/Appellant*

Arizona Attorney General's Office, Education and Health Section, Phoenix  
By Louis F. Caputo, III; Aubrey J. Corcoran; J. Nicholas Bacon  
*Counsel for Defendants/Appellees*

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**MEMORANDUM DECISION**

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Randall M. Howe joined.

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**C A M P B E L L**, Judge:

¶1 Saguaro Healing, LLC appeals the superior court’s dismissal of its suit seeking declaratory judgment against the State of Arizona, Arizona Department of Health Services (“ADHS”), and ADHS Director Cara Christ (collectively, the “State”). Saguaro argues that ADHS’s erroneous application of Arizona Administrative Code (“A.A.C.”) R9-17-303 deprived it of the opportunity to obtain a marijuana dispensary registration certificate (“certificate”) and resulted in no certificates being awarded to La Paz County in 2016. Saguaro asserts that ADHS’s actions violated Arizona Revised Statutes (“A.R.S.”) section 36-2804(C), which requires that at least one dispensary operate in each county. Because ADHS followed its regulations, we affirm the dismissal.

**BACKGROUND<sup>1</sup>**

¶2 ADHS is the administrative agency responsible for implementing and administering the Arizona Medical Marijuana Act (“AMMA”). *See* A.R.S. §§ 36-2801(4), -2803. ADHS divides the state into geographic regions called Community Health Analysis Areas (“CHAAs”), which are used to determine prioritization of new certificates. A.A.C. R9-17-101(7), -303(B). The AMMA and ADHS regulations give priority to certain CHAAs to ensure at least one dispensary resides in each county, as required by A.R.S. § 36-2804, and to meet the demand of patients in CHAAs with a high number of medical marijuana cards. *See* A.A.C. R9-17-101, -303(B)(1) (at least one dispensary per county), -303(B)(2)(a) (number of patients), -303(B)(3) (ratio of patients to operating dispensaries).

¶3 Sometime before May 31, 2016, ADHS reviewed existing certificates and their locations. Based on that survey, ADHS posted a notice on its website on June 16, 2016, announcing it would accept applications for

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<sup>1</sup> In reviewing a motion to dismiss, we assume as true all facts alleged in the complaint. *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998).

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new certificates between July 18, 2016, and July 29, 2016. The announcement included a list of CHAAs determined to have priority if ADHS received more applications than the number of certificates available. The announcement explained that because each county had at least one dispensary as of May 31, 2016, ADHS would not give priority under A.A.C. R9-17-303(B)(1) for geographic diversity, but would allocate certificates under the other enumerated prioritization grounds. *See* A.A.C. R9-17-303(B).

¶4 Saguario timely applied for a certificate, indicating its dispensary would reside in CHAA 36. When ADHS conducted its May 2016 survey, one dispensary operated in CHAA 36, the Quartzite/Salome region in La Paz County. After the survey was complete, this dispensary moved to another CHAA, leaving no dispensaries in CHAA 36 or La Paz County after July 2016.

¶5 Once the application period closed, ADHS used its CHAA prioritization list from June to allocate certificates. Applications for CHAA 36, therefore, did not have priority status relating to geographic diversity. In October, ADHS informed Saguario that although its application was complete and in compliance with regulations, it was not selected to receive a certificate. After completion of the 2016 certificate allocation process, neither CHAA 36 nor La Paz County had any dispensaries.

¶6 Saguario filed a complaint for special action seeking declaratory relief, arguing that proper application of A.A.C. R9-17-303 required ADHS to ascertain prioritization of CHAAs 60 working days after the application period opened. Saguario argued that ADHS's use of the prioritization list from June was erroneous and deprived La Paz County of a dispensary, contrary to the AMMA. Saguario concluded that it or another dispensary should have been awarded a certificate for a dispensary located in CHAA 36. The State moved to dismiss, arguing that the complaint failed to state a claim upon which relief could be granted because ADHS correctly followed its regulations. *See* Ariz. R. Civ. P. 12(b)(6).

¶7 The superior court dismissed the complaint for special action, reasoning that ADHS's approach was "consistent with the language of the regulation" because "R9-17-303(B) . . . does not say when, during the process of issuing new certificates, DHS must determine how the certificates will be allocated." Therefore, the court reasoned, ADHS may, for reasons of practicality and fairness, "determine [prioritization] before the beginning of the application period, instead of waiting until the deadline for actually making the allocation."

## DISCUSSION

¶8 We review the dismissal of a claim under Rule 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56, ¶ 7 (2012). We will affirm a dismissal if, as a matter of law, the plaintiffs could not be entitled to relief under any interpretation of the facts susceptible to proof. *Coleman*, 230 Ariz. at 356, ¶ 8. We need not adopt the trial court’s reasoning and may affirm the dismissal if it is correct for any reason. *Dube v. Likins*, 216 Ariz. 406, 417, ¶ 36 n.3 (App. 2007).

¶9 We also review the interpretation of statutes and regulations de novo. *Compassionate Care Dispensary, Inc. v. Ariz. Dep’t of Health Servs.*, 244 Ariz. 205, 211, ¶ 17 (App. 2018); *Libra Group, Inc. v. State*, 167 Ariz. 176, 179 (App. 1991). We first look to the plain meaning of the law, “effectuat[ing] the text if it is clear and unambiguous.” *BSI Holdings, LLC v. Ariz. Dep’t of Trans.*, 244 Ariz. 17, 19, ¶ 9 (2018). We read words in context and look to the statute or regulation as a whole to interpret a specific provision. *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017).

¶10 The AMMA requires dispensaries to register with ADHS by applying for and obtaining a certificate. See A.R.S. § 36-2804(A)–(B). Upon receipt of a certificate application, ADHS must respond to the prospective dispensary within 90 days. A.R.S. § 36-2804(B). The AMMA limits the number of certificates statewide to not more than one certificate per ten licensed pharmacies, “except that [ADHS] may issue [certificates] in excess of this limit if necessary to ensure that [ADHS] issues at least one [certificate] in each county in which an application has been approved.” A.R.S. § 36-2804(C).

¶11 Pursuant to its regulations, ADHS reviews current certificates “each calendar year” to determine if it may issue additional certificates under A.R.S. § 36-2804(C). A.A.C. R9-17-303(A). When review reveals that additional certificates are available, ADHS must announce that it will accept applications and publish the application deadline at least 30 days before the application period begins. A.A.C. R9-17-303(A)(1). The regulation continues:

c. Sixty working days after the date the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with [the AMMA and ADHS regulations] to participate in the allocation process than the Department is allowed to issue.

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i. If the Department received more dispensary registration certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (B).

A.A.C. R9-17-303(A)(1)(c). The enumerated criteria in subsection (B) give priority to counties with no existing dispensaries, and then to CHAAs with the highest number of qualifying patients holding registry identification cards. A.A.C. R9-17-303(B).

¶12 ADHS based its prioritization list on dispensaries that existed in May 2016 but did not award certificates until months later. Saguario argues that ADHS violated these regulations by failing to perform the priority analysis 60 working days after the application period opened.<sup>2</sup> The State acknowledges that ADHS allocated certificates according to priorities determined using data from the May 2016 review of dispensaries, asserting that its actions complied with ADHS regulations.

¶13 A plain reading of the regulations reveal no error by ADHS or the superior court. The regulations plainly direct ADHS to follow a series of steps: (1) review the availability of new certificates permitted under A.R.S. § 36-2804(C), A.A.C. R9-17-303(A); (2) 30 days before the application period opens, announce the application period, A.A.C. R9-17-303(A)(1)(a); and (3) 60 days after the application period opens, determine the number of certificates received and, if necessary, allocate them according to the priorities enumerated in ADHS regulations, A.A.C. R9-17-303(A)(1)(c). It follows that ADHS awarded new certificates (step three) using information gathered from its initial review (step one).

¶14 Saguario argues that the regulations only permitted ADHS to post a notice announcing when it will accept certificate applications and that it should wait until that process is complete to determine which CHAAs have priority under the regulations. But to announce that it is accepting applications, ADHS must first conduct a review to ensure it does not issue more applications than allowed by statute. *See* A.R.S. § 36-2804(C). For that reason, A.A.C. R9-17-303 enables ADHS to review existing

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<sup>2</sup> In its reply brief, Saguario argues that ADHS should use a statewide ratio to determine the number of dispensaries permitted, rather than a “CHAA-by-CHAA analysis.” Because this argument appears for the first time in a reply brief, it is waived. *Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 404, ¶ 5 n.1 (2005).

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dispensary certificates, and then to perform the entire allocation process – including prioritization – with that data. While ADHS is not required to list CHAAs with priority at the time it announces the availability of new certificates, it does not violate its rules by doing so.

¶15 Saguario’s argument seems to conflate review of available certificates and the calculation of prioritization with the actual allocation of certificates according to priority. Saguario asserts that “R9-17-303(A)(1)(c) clearly, plainly, and unambiguously states that ADHS must make its determination of the number of compliant applications and make its allocation based on that determination” 60 working days after ADHS begins accepting certificate applications. However, ADHS regulations do not authorize or require any additional survey of existing dispensaries beyond the initial survey that begins the allocation process. *See* A.A.C. R9-17-303(A). While it is true that ADHS must review certificate applications 60 days after the application period opens, it is also true that ADHS must conduct its prioritization using data gleaned from its annual review. Whether the prioritization list is calculated and published at the beginning of the application period or applied 60 days later, it will be based on the same information gathered during the annual review.

¶16 Saguario further argues that basing prioritization on data from ADHS’s annual review renders the 60-day requirement in R9-17-303(A)(1)(c)(i) and R9-17-303(B) meaningless. *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949) (“Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial.”). We disagree. A.R.S. § 36-2804(B) requires ADHS to respond to an application for a certificate within 90 days of receipt. Accordingly, when the regulation is read in context, the 60-day requirement facilitates prompt review of certificate applications to ensure that ADHS meets its 90-day statutory deadline.

¶17 Finally, Saguario argues that calculating prioritization before the application period resulted in a violation of A.R.S. § 36-2804(C) because, upon conclusion of the allocation process, no dispensary resided in La Paz County. While this may be true, we are not persuaded that ADHS acted in error. Indeed, if the sole dispensary in La Paz County had closed 61 days after the application period opened, the same result would occur. So long as ADHS conducts an annual review of certificates, it fulfills its obligations, regardless when it gathers the information and generates its report. The possibility that an applicant will be disadvantaged by the precise day ADHS conducts the review exists no matter the date of review. While the

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date may seem arbitrary in retrospect because of dispensary movement or closures, ADHS did not violate the statute or rules.

¶18 Because ADHS's actions were consistent with its regulations, Saguario failed to state a claim upon which relief could be granted, and the court did not err in dismissing this action. Saguario requested attorney fees and costs under the Arizona Rules of Procedure for Special Actions (4)(g), A.R.S. § 12-341 and A.R.S. § 12-348(A); because Saguario did not prevail, we decline to award fees and costs.

**CONCLUSION**

¶19 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA