

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN M. ROONEY  
Assistant Chief Counsel  
3 MARLOU de LUNA (State Bar No. 162259)  
Senior Counsel  
4 Department of Business Oversight  
5 320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344  
6 Telephone: (213) 576-7606  
7 Facsimile: (213) 576-7181  
8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) FIL ORG ID: 314245  
13 )  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
15 ) (1) DESIST AND REFRAIN ORDER  
Complainant, ) PURSUANT TO CORPORATIONS CODE  
16 ) SECTION 31402  
17 v. ) (2) CITATION WITH DESIST AND REFRAIN  
ORDER AND ADMINISTRATIVE  
18 ALLEVIANT HEALTH CENTERS, LLC; ) PENALTIES PURSUANT TO  
BRIAN MEARS, ) CORPORATIONS CODE SECTION 31406  
19 )  
20 Respondents. )  
21 )

22 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), finds the  
23 following:

24 I.

25 Introduction

26 1. Alleviant Health Centers, LLC (Alleviant) is an Arkansas limited liability company  
27 with its principal place of business at 417 Main Street, Little Rock, Arkansas 72211. Alleviant is in  
28

1 the business of managing “outpatient medical practice that will administer and provide ketamine  
2 infusions, transcranial magnetic stimulation, and other related health products and service, to the  
3 general public.” The company maintains a website at www.alleviant.com.

4 2. At all relevant times, Brian Mears (Mears) is the manager and chief executive of  
5 Alleviant.

6 3. The Commissioner of the Department of Business Oversight (Department) is  
7 responsible for administering and enforcing the California Franchise Investment Law (Corporations  
8 Code § 31000 et seq.).

9 **II.**

10 **Statement of Facts**

11 4. On January 14, 2019, Alleviant submitted an initial application with the Department to  
12 register the offer and sale in California of outpatient healthcare center franchises operating under  
13 Alleviant’s proprietary information, business methods and concepts, and trademarks pursuant to  
14 franchise agreements. The agreements grant the right to open, manage and promote an outpatient  
15 healthcare practice that will administer ketamine infusion therapy and transcranial magnetic  
16 stimulation services and furnish other related health clinic services, such as transitional care, to the  
17 general public under Alleviant’s proprietary business methods and concepts. Alleviant’s Franchise  
18 Disclosure Document (FDD) states that the franchisee would “own and operate a business that  
19 manages an outpatient medical practice that will administer and provide ketamine infusions,  
20 transcranial magnetic stimulation, and other related health products and service, to the general public  
21 utilizing Our<sup>1</sup> proprietary information, business methods and concepts, and trademarks.”

22 5. During the review process, the Commissioner through her staff, discovered Alleviant  
23 engaged in the unregistered offer and sale of at least one franchise, in California, in January of 2019  
24 (January 2019 transaction). In response to the Department’s inquiry, Alleviant stated that it sent the  
25 potential franchisee an FDD on November 26, 2018. Thereafter, the franchisee paid \$30,000.00 to  
26 Alleviant for a “feasibility analysis” on January 26, 2019, and subsequently signed a franchise

27 \_\_\_\_\_  
28 <sup>1</sup> “Our” is defined in the FDD as Alleviant Health Centers, LLC and its affiliates.

1 agreement on January 28, 2019. The payment of the \$30,000.00 and the execution of the franchise  
2 agreement took place before Alleviant had a valid franchise registration from the Department in  
3 violation of Corporations Code section 31110.

4 6. Alleviant failed to report to the Commissioner the January 2019 transaction in  
5 violation of Corporations Code section 31200. Alleviant did not disclose the January 2019 transaction  
6 until prompted by the Department during the review of its initial franchise application.

7 7. In March of 2019, Alleviant submitted a revised FDD with an issuance date of March  
8 13, 2019. But, Item 20 of the revised FDD failed to disclose the January 2019 transaction in violation  
9 of Corporations Code section 31200. Under Item 20, page 52, in a chart titled Projected Opening as  
10 of March 13, 2019, Alleviant represented that there “0” Franchise Agreements Signed But Outlets  
11 Not Yet Opened in California. The January 2019 transaction was executed on January 28, 2019 and  
12 Alleviant was required to report the transaction under section 31200 of the Corporations Code.

13 **III.**

14 **Desist and Refrain Order and Citation**  
15 **Violations of Corporations Code Sections 31110, 31123 and 31200**

16 8. Corporations Code section 31110 provides:

17 On and after April 15, 1971, it shall be unlawful for any person to offer  
18 or sell any franchise in this state unless the offer of the franchise has been  
19 registered under this part or exempted under Chapter 1 (commencing  
with Section 31100) of this part.

20 9. Corporations Code section 31200 provides:

21 It is unlawful for any person willfully to make any untrue statement of a  
22 material fact in any application, notice or report filed with the  
23 commissioner under this law, or willfully to omit to state in any such  
24 application, notice, or report any material fact which is required to be  
stated therein, or fail to notify the commissioner of any material change  
as required by Section 31123.

25 10. Corporations Code section 31402 provides:

26 If, in the opinion of the commissioner, the offer of any franchise is  
27 subject to registration under this law and it is being, or it has been,  
28 offered for sale without the offer first being registered, the commissioner

1 may order the franchisor or offeror of that franchise to desist and refrain  
2 from the further offer or sale of that franchise unless and until the offer  
3 has been duly registered under this law. If, after that order has been made,  
4 a request for a hearing is filed in writing within 60 days from the date of  
5 service of the order by the person to whom the order was directed, a  
6 hearing shall be held in accordance with Chapter 5 (commencing with  
7 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
8 Code, and the commissioner shall have all of the powers granted under  
9 that chapter. Unless that hearing is commenced within 15 business days  
10 after the request is made (or the person affected consents to a later date),  
11 the order shall be deemed rescinded.

12 If that person fails to file a written request for a hearing within 60 days  
13 from the date of service of the order, the order shall be deemed a final  
14 order of the commissioner and shall not be subject to review by any court  
15 or agency, notwithstanding Section 31501.

16 11. Corporations Code section 31406 provides:

17 (a) If, upon inspection or investigation, based upon a complaint or  
18 otherwise, the commissioner has cause to believe that a person is  
19 violating any provision of this division or any rule or order promulgated  
20 pursuant to this division, the commissioner may issue a citation to that  
21 person in writing describing with particularity the basis of the citation.  
22 Each citation may contain an order to desist and refrain and an  
23 assessment of an administrative penalty not to exceed two thousand five  
24 hundred dollars (\$2,500) per violation and shall contain reference to this  
25 section, including the provisions of subdivision (c). All penalties  
26 collected under this section shall be deposited in the State Corporations  
27 Fund.

28 (b) The sanctions authorized under this section shall be separate from,  
and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails  
to notify the commissioner that the person intends to request a hearing  
as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with  
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this  
section, the commissioner may apply to the appropriate superior court  
for a judgment in the amount of the administrative penalty and order  
compelling the cited person to comply with the order of the  
commissioner. The application shall include a certified copy of the final  
order of the commissioner and shall constitute a sufficient showing to  
warrant the issuance of the judgment and order.

12. Based upon the foregoing findings, the Commissioner is of the opinion that Alleviant  
Health Centers, LLC and Brian Mears have engaged in the offer and sale of franchises in this state

1 that are subject to registration under the California Franchise Investment Law without the offers first  
2 being registered, in violation of Corporations Code section 31110. In addition, Alleviant Health  
3 Centers, LLC and Brian Mears failed to amend its initial application to disclose the January 2019  
4 transaction, in violation of Corporations Code sections 31200.

5 Pursuant to California Corporations Code section 31402, Alleviant Health Centers, LLC and  
6 Brian Mears are hereby ordered to desist and refrain from the further offer or sale of franchises unless  
7 and until the offers have been duly registered under the California Franchise Investment Law or  
8 unless exempt. Further, under Corporations Code section 31406, Alleviant Health Centers, LLC and  
9 Brian Mears are hereby cited and ordered to desist and refrain from violating Corporations Code  
10 sections 31110 and 31200.

11 This order is necessary, in the public interest, for the protection of franchisees and consistent  
12 with the purposes, policies and provisions of the Franchise Investment Law.

13 In light of the foregoing findings, under Corporations Code sections 31402 and 31406,  
14 Alleviant Health Centers, LLC and Brian Mears are hereby ordered to pay the Commissioner an  
15 administrative penalty in the amount of \$ 5,000.00 for one violation of each of sections 31110 and  
16 31200 of the Corporations Code.

17 The administrative penalties in the amount stated above shall be made payable in the form of  
18 a cashier's check or Automated Clearing House deposit to the "Department of Business Oversight,"  
19 and transmitted to the attention of Accounting – Enforcement Division, Department of Business  
20 Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall be  
21 concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight, 320 West  
22 4th Street, Suite 750, Los Angeles, California 90013, no later than 30 days from the date of this order.

23 Dated: September 18, 2019

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

24  
25  
26  
27  
28

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division