

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,)	Case No: CVCV051068
)	
Petitioner,)	
)	
v.)	
)	RESPONDENT'S ANSWER
IOWA BOARD OF PHARMACY,)	
)	
Respondent.)	

COMES NOW the Respondent, the Iowa Board of Pharmacy, and for its Answer to the Petition for Judicial Review, respectfully states the following:

1. Petitioner filed a lengthy Petition detailing the history of marijuana regulation in the State of Iowa and nationally. The majority of this discussion is far afield from the case at hand. As a result, the Board will not respond individually to each allegation. All paragraphs in the Petition not explicitly addressed below are deemed denied.

2. The Board is the state agency responsible for the licensing and regulation of pharmacies, drug wholesalers, pharmacists, pharmacy technicians, and pharmacy support persons in the State of Iowa. Iowa Code ch. 147, 155A (2015).

3. The Board further has duties to administer the regulatory provisions of the Uniform Controlled Substances Act, Iowa Code chapter 124.

4. Petitioner is a citizen and resident of the State of Iowa, who periodically petitions the Board regarding the scheduling of marijuana under the Uniform Controlled Substances Act.

5. On July 7, 2014, the Petitioner filed a Marijuana Scheduling Petition, which requested that the Board recommend to the General Assembly that marijuana be removed from Schedule I for the 2015 legislative session.

6. On January 5, 2015, the Board issued an Order Denying Petition, declining Petitioner's invitation to make a recommendation to remove marijuana from Schedule I. The Order instead recommended that cannabidiol be listed in Schedule II. The Board subsequently, on March 9, 2015, declined Petitioner's request to reconsider this Order.

7. While Petitioner asserts that the Order and the denial of reconsideration are two separate agency actions, this assertion is incorrect. Only one action agency is at issue—the Board's 2015 Order, which did not recommend the removal of marijuana from Schedule I. See Petition for Judicial Review at 1.

8. The Board acknowledges that its Order constitutes "final agency action" of other agency action and is reviewable under Iowa Code section 17A.19.

9. Additionally, Petitioner attempts to challenge a bill proposed by the Board for this current legislative session (2016). Petitioner characterizes this proposed bill as the Board's decision "not to recommend the change it approved on January 5, 2015 . . . for the reclassification of cannabidiol." Because the Board's inaction bears a discernible relationship to the Board's statutory duties under Iowa Code section 124.201, Petitioner was required to first present the claim to the Board before proceeding to court. No one, including the Petitioner, petitioned the Board to make recommendations concerning the scheduling of marijuana or cannabidiol to the General Assembly for 2016 legislative session. Therefore, there is no "decision" of the Board to appeal. Although the Board's proposed bill perhaps constitutes final agency action for purposes of the action actually proposed in the bill, it does not constitute final agency action for an issue not before the Board nor expressly considered by the Board in proposing the bill.

10. The Board acknowledges the Court has jurisdiction over the Petition for Judicial Review and agrees venue in the Polk County District Court is proper.

11. The Board agrees the Petition is not time-barred.

12. The Board denies that grounds under Iowa Code section 17A.19(10) exist, which would warrant reversal of its January 5, 2015 Order or its proposed bill to the General Assembly for the 2016 legislative session regarding recommendations for changes to the scheduling of certain substances under the Uniform Controlled Substances Act.

AFFIRMATIVE DEFENSES

1. Petitioner is not “aggrieved or adversely affected” by the final agency decisions cited in the Petition, as required by Iowa Code section 17A.19(1).

2. Not all the actions complained of in the Petition constitute final agency action reviewable under Iowa Code section 17A.19.

3. Petitioner has failed to exhaust administrative remedies regarding his challenge to the proposed bill for the 2016 legislative session.

4. The relief sought by Petitioner is not available in an action for judicial review.

5. It is unclear what relief could be granted under the Petition.

WHEREFORE, the Board respectfully requests that a briefing schedule be issued, the Petition for Judicial Review be denied, and costs assessed to the Petitioner.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

/s/ Meghan Gavin

MEGHAN GAVIN
Assistant Attorney General
Iowa Department of Justice
Hoover State Office Bldg., 2nd Fl.
1305 East Walnut Street
Des Moines, Iowa 50319
Phone: (515) 281-6858
Fax: (515) 281-4209
Email: [Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)
ATTORNEYS FOR RESPONDENT.