# Exhibit #2

IOWA BOARD OF PHARMACY

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| MARIJUANA SCHEDULING | ) | **PETITION FOR** |
| | ) | **AGENCY ACTION** |

**By provision of law:**

> Annually, within thirty days after the convening of each regular session of the general assembly, the Board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in sections 124.204, 124.206, 124.208, 124.210, or 124.212, which it deems necessary or advisable.

**Iowa Code § 124.201(1) (2014).**

> 1. The board shall recommend to the general assembly that the general assembly place a substance in schedule I if the substance is not already included therein and the board finds that the substance:
>
> a. Has high potential for abuse; and
>
> b. Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.
>
> 2. If the board finds that any substance included in schedule I does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

**Iowa Code § 124.203 (2014).**

Since the year 1996, twenty-two (22) states have enacted laws accepting the medical use of marijuana in treatment[1]. In the year 2014, ten

[1] Alaska Statutes § 17.37 (1998); Arizona Revised Statutes, Title 36, Chapter 28.1, §§ 36-2801 through 36-2819 (2010); California Health & Safety Code § 11362.5 (1996); Colorado Constitution Article XVIII, Section 14 (2000); Connecticut Public Act No. 12-55, Connecticut General Statutes, Chapter 420f (2012); Delaware Code, Title 16, Chapter 49A, §§ 4901A through 4926A (2011); Hawaii Revised Statutes § 329-121 (2000); Illinois Public Act 98-0122 (2013); 22 Maine Revised Statutes § 2383-B (1999); Annotated Code of Maryland Section 13–

(10) additional states, including the state of Iowa, enacted laws accepting the medical use of marijuana extracts[2]. Marijuana has been accepted for medical use in treatment in the United States since 1996. No state has repealed a law accepting the medical use of marijuana in treatment. As the U.S. Drug Enforcement Administration's Chief Administrative Law Judge, Francis L. Young, held in 1988, "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." OPINION AND RECOMMENDED RULING, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF ADMINISTRATIVE LAW JUDGE, DEA Docket No. 86-22, Sept. 6, 1988, pp. 58-59.

In the year 2010, this board conducted a thorough analysis of the eight (8) factors listed in Iowa Code § 124.201(1)(a)-(h), and found that marijuana should be removed from Schedule I, Iowa Code § 124.204(4)(m), and made a recommendation to the Iowa legislature that marijuana should be removed from Schedule I.

In the year 2011, the Iowa legislature did not remove marijuana from Schedule I; neither did the legislature remove the duty this board has to recommend changes to the schedules of controlled substances.

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3301 through 13–3303 and 13–3307 through 13–3311 (2014); Massachusetts Chapter 369 of the Acts of 2012 (2012); Michigan Compiled Laws, Chapter 333, §§ 333.26421 through 333.26430 (2008); Minnesota SF 2470 -- Signed into law by Gov. Mark Dayton on May 29, 2014, Approved: By Senate 46-16, by House 89-40, Effective: May 30, 2014; Montana Code Annotated § 50-46-101 (2004); Nevada Constitution Article 4 § 38 - Nevada Revised Statutes Annotated § 453A.010 (2000); New Hampshire Revised Statutes Annotated Chapter 126-W (2013); New Jersey Public Laws 2009, Chapter 307, New Jersey Statutes, Chapter 24:6I, §§ 24:61-1 through 24:6I-16 (2010); New Mexico Statutes Annotated § 30-31C-1 (2007); Oregon Revised Statutes § 475.300 (1998); Rhode Island General Laws § 21-28.6-1 (2006); 18 Vermont Statutes Annotated § 4471 (2004); Revised Code Washington (ARCW) § 69.51A.005 (1998).

[2] Alabama, Senate Bill 174, Signed into law by Governor Robert Bentley (Apr. 1, 2014); Florida, Senate Bill 1030, Signed into law by Governor Rick Scott (June 16, 2014); Iowa, Senate File 2360, Signed into law by Governor Terry Branstad (May 30, 2014); Kentucky, Senate Bill 124, Signed into law by Governor Steve Beshear (Apr. 10, 2014); Mississippi, House Bill 1231, Signed by Gov. Phil Bryant (Apr. 17, 2014); North Carolina, House Bill 1220, Signed by Gov. Pat McCrory (July 3, 2014); South Carolina, Senate Bill 1035, The bill became law because Governor Nikki Haley did not sign or veto the bill within five days of its passage (May 29, 2014); Tennessee, Senate Bill 2531, Signed into law by Gov. Bill Haslam (May 16, 2014); Utah, House Bill 105, Signed into law by Governor Gary Herbert (Mar. 21, 2014); Wisconsin, Assembly Bill 726, Signed by Governor Scott Walker (Apr. 16, 2014).

In the year 2012, the Iowa legislature did not remove marijuana from Schedule I; neither did the legislature remove the duty this board has to recommend changes to the schedules of controlled substances.

In the year 2013, the Iowa legislature did not remove marijuana from Schedule I; neither did the legislature remove the duty this board has to recommend changes to the schedules of controlled substances.

In the year 2014, the Iowa legislature did not remove marijuana from Schedule I; neither did the legislature remove the duty this board has to recommend changes to the schedules of controlled substances.

In sum, this board still has a statutory duty to recommend that marijuana be removed from Schedule I until such time as: (1) this board finds that marijuana has no accepted medical use in treatment in the United States and is unsafe for use in treatment under medical supervision; or (2) the Iowa legislature removes the duty this board has to recommend changes to the schedules of controlled substances.

The board has not conducted any analysis of the eight (8) factors listed in Iowa Code § 124.201(1)(a)-(h) as they relate to the medical use of marijuana since 2010. Therefore, the board has no basis on which to reverse its previous finding that marijuana should be removed from Schedule I. It is unreasonable, as well as unlawful, for this board to now refuse to recommend the removal of marijuana from Schedule I. See Ruling on Petition for Judicial Review, McMahon v. Iowa Board of Pharmacy, No. CV 7415, Polk County District Court (April 21, 2009), at page 4, footnote 1 (“A finding of accepted medical use for treatment in the United States alone would be sufficient to warrant recommendation for reclassification or removal pursuant to the language of Iowa Code section 124.203”).

This board has a continuing duty to notify the legislature that the condition for including marijuana in Schedule I is no longer true for marijuana. Marijuana no longer meets that statutory condition of having no accepted medical use in treatment in the United States, by any analysis, legal or scientific.

The board is not constrained to considering only the eight (8) factors in Iowa Code 124.201(1)(a)-(h). Iowa law says the board must “consider”

the eight (8) factors, but these are by no means the only factors the board must consider. None of the eight (8) factors are determinative, either individually, or in combination, as to whether a substance has or does not have accepted medical use in treatment in the United States.

The Iowa legislature did not say marijuana must have accepted medical use in treatment in the state of Iowa. The Iowa legislature's choice of the term "in the United States" was not just some mere accident. This board cannot interpret the language of Iowa Code §§ 124.203(1)(b), 124.205(1)(b), 124.207(1)(b), 124.209(1)(b), and 124.211(1)(b), to mean "accepted medical use in treatment in the state of Iowa" when it was clearly not the intent of the Iowa legislature in enacting the Iowa Uniform Controlled Substances Act to determine whether the state of Iowa accepts marijuana's medical use in treatment. The intent of the act is to make Iowa's law uniform with the other states that have enacted the uniform act. Iowa Code § 124.601 (2014). And, the intent of the Uniform Controlled Substances Act is to make it uniform with the federal Controlled Substances Act. Uniform Controlled Substances Act (1994), Prefatory Note (http://www.uniformlaws.org/shared/docs/controlled%20substances/UCSA_final%20_94%20with%2095amends.pdf).

A federal court has interpreted the meaning of "accepted medical use in treatment in the United States" in Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987):

> We add, moreover, that the Administrator's clever argument conveniently omits any reference to the fact that the pertinent phrase in section 812(b)(1)(B) reads "*in the* United States," (emphasis supplied). We find this language to be further evidence that the Congress did not intend "accepted medical use in treatment in the United States" to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.

If the board thinks marijuana has "medical efficacy," then so be it. However, marijuana clearly had no legally accepted medical use in treatment in Iowa in 2010 when the board recommended removing marijuana from Schedule I, Iowa Code § 124.204(4)(m), so marijuana

clearly must have had some accepted medical use in treatment somewhere else in the United States when the board made that recommendation.

This board must accept its statutory duty to notify the Iowa legislature that marijuana can no longer be legally classified as a Schedule I controlled substance here in Iowa, either as a matter of law or as a matter of science. The current classification of marijuana in Iowa is unlawful, regardless of any scientific analysis simply because of the statutory condition that marijuana must have no accepted medical use in treatment anywhere in the United States to remain lawfully classified in Iowa Schedule I. If the Iowa legislature no longer wants to hear the advice of the board, it can amend the statute to remove that duty from the board.

Because this matter is of great importance to the public, the board cannot withhold its advice from the Iowa legislature and must recommend that marijuana be removed from Iowa Schedule I. See Ruling and Order Respondent's Motion to Dismiss the Petition for Judicial Review, Olsen v. Iowa Board of Pharmacy, No. CV 45505, Polk County District Court (October 23, 2013), at page 5:

> In reviewing the Petition for Judicial Review, the Petitioner makes allegations that the usage of marijuana has an accepted medical use in the United States and that as of the date of the filing of the Petition 19 jurisdictions, 18 states and the District of Columbia, have legally recognized that marijuana has accepted medical use and treatment of various medical conditions. It would appear that on the face of the Petition, and applying the standards as set out by the Iowa Supreme Court for the review of a motion to dismiss, that the issue has one of public importance.

Iowa law does not give the board the option of doing nothing unless the facts have changed. The board has not found any evidence that marijuana should be included in Iowa Schedule I. Iowa Code § 124.203(2) (2014), clearly states the board must either: (1) "recommend that the general assembly place the substance in a different schedule" or, (2) recommend that the general assembly "remove the substance from the list of controlled substances."

Compliance with the law here in Iowa is not optional. Where the legislature has specifically required the advice of the board on the question of marijuana's accepted medical use in treatment in the United States, the board cannot withhold that advice. The executive branch has a clear duty to faithfully execute the laws the legislature enacts.

Respectfully Submitted:

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