

# Exhibit #4

Iowa Board of Pharmacy, January 12, 2015

IOWA BOARD OF PHARMACY

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MARIJUANA SCHEDULING

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**PETITION FOR  
RECONSIDERATION**

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**INTRODUCTION**

I would like to thank the board for its discussion on January 5, 2015, at the third hearing on my petition for marijuana scheduling. I also want to thank the subcommittee for the report it prepared for the second hearing on my petition on November 19, 2014. And, I would like to thank the committee for its decision to form the subcommittee to take a closer look during the first hearing on my petition on August 27, 2014.

In particular, I would also like to thank the board for the 4 public hearings it held on this issue in 2009.

I acknowledge this is an unusual request, and I appreciate the time the board has spent on it.

**THE SCHEDULING PROCESS**

The scheduling of controlled substances in Iowa is not a formal rule making process. See Iowa Code § 124.201 (2014). I would like the board to pay particular attention to the fact that, unlike federal scheduling which is a formal rule making procedure, Iowa law makes scheduling an informal procedure. Please compare the process in 21 U.S.C. § 811 (2014) with the Iowa version. Also, you will find that same difference between the uniform act and Iowa's version of it. Compare § 201 of the uniform act with Iowa's version in Iowa Code § 124.201 (2014).

<http://www.uniformlawcommission.com/>

[http://www.uniformlaws.org/Act.aspx?title=Controlled Substances Act](http://www.uniformlaws.org/Act.aspx?title=Controlled%20Substances%20Act)

This should explain why you are “struggling” and “wrestling” with this issue. See Iowa Code § 124.601 (2014) (“This chapter shall be so construed as to effectuate its general purpose to make uniform the law of

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those states which enact it”); Iowa Code §124.602 (2014) (“This chapter may be cited as the ‘*Uniform Controlled Substances Act*’”). The Uniform Controlled Substances Act says scheduling should be a formal rule making process. Iowa’s scheduling process is not uniform in this regard.

While I acknowledge this difference in Iowa law, the board still has a statutory duty to advise the legislature on the scheduling of controlled substances in Iowa. The eight factor analysis in Iowa Code § 124.201(1)(a)-(h), and the recommendation requirements in sections 201, 203, 205, 207, 209, and 211, make it clear that the legislature intended the board to give its expert advice to the legislature.

Finally, there is no requirement in Iowa that requires Iowa to adopt federal scheduling. See Iowa Code, § 124.201(4). A reasonable interpretation of this section is that Iowa will typically adopt federal scheduling, but there is no requirement that Iowa must do so. The section clearly gives the board the option not to follow federal scheduling. This is consistent with federalism. See *Gonzales v. Oregon*, 546 U.S. 243, 271 (2006) (“health and safety is ‘primarily, and historically, a matter of local concern’”).

Federal licensing requires compliance with state laws, and state licensing requires compliance with federal laws. So, any appearance of conflict between state and federal scheduling is resolved by the more restrictive of the two.

The question this board must face is, “When is it appropriate not to adopt federal scheduling?” The fact that thirty-four states and two federal jurisdictions (DC and Guam) have enacted medical marijuana laws over the past two decades is the evidence that state scheduling can and must be adjusted to reflect this change in circumstance. Marijuana is also the only substance in schedule 1 that had extensive medical use in the United States before the state and federal controlled substances acts were enacted. *James v. Costa Mesa*, 700 F.3d 394, 409 (9th Cir. 2012) (Berzon, J., dissenting). Marijuana does not belong in schedule 1.

And, finally, less than 30 days ago federal law was amended to prevent the enforcement of federal marijuana laws that conflict with state medical marijuana laws. Federal law now recognizes state medical marijuana laws. And, this new federal law specifically references Iowa.

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Consolidated and Further Continuing Appropriations Act, 2015 (H.R. 83, Congressional Session 2014-2015), signed into law by the President on December 16, 2014, Section 538.

I know this summary of the scheduling process does not address all of your concerns, but Iowa law does allow you to recommend scheduling of marijuana that differs from federal scheduling. The next question, then, is whether you should recommend the rescheduling marijuana in Iowa.

### **COMPOUNDS OR CHEMICALS**

At the hearing on January 5, 2015, several members of the board brought up the issue of derivatives of marijuana, compounds of marijuana derivatives, and chemicals in the marijuana plant.

The point was made at the hearing that derivative products made from marijuana, Sativex (dronabinol and cannabidiol) and Epidiolex (cannabidiol), are in clinical trials intended to have them approved by the FDA as products in the United States. The point was also made at the hearing that we currently have Marinol (dronabinol) scheduled as a drug product in both the Iowa and federal schedules.

Also, the point was made at the hearing that cannabidiol is in federal schedule 1, and the board has now voted to recommend that Iowa reclassify cannabidiol to schedule 2, in spite of the fact there are no federally approved products that contain cannabidiol. The board has affirmatively recognized that Iowa is not required to adopt federal scheduling (see the section above).

However, at the hearing the board made a critical error in logic when comparing marijuana to opium. The argument was made by a member of the board that opium is in schedule 1 and the derivative made from it, morphine, is in schedule 2. The argument was then made that marijuana should be in the same schedule as opium. Opium is actually in schedule 2 and has always been in schedule 2. I am requesting that this board recommend the removal of marijuana from schedule 1 because marijuana has at least as much medical value as opium. The board said it wanted these two plants to be in the same schedule, but actually voted to put them in different schedules.

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Iowa law currently classifies naturally derived dronabinol in state schedule 3. Because we have naturally derived dronabinol in state schedule 3 and because the board just voted to recommend that Iowa place naturally derived cannabidiol in state schedule 2 (because state law says it is medicine), marijuana currently has at least as much, if not more, medical value than opium here in the state of Iowa. There are no currently approved drug products that contain either naturally derived dronabinol or naturally derived cannabidiol. Both of these substances are in federal schedule 1. Iowa is leading the way on these two substances which are not approved drug products and Iowa should be consistent by leading the way on the plant these two substances are made from.

### **CONCLUSION**

The board should not reject the reclassification of marijuana because marijuana hasn't been approved by the FDA for use as a drug product. Plants in state and federal schedule 2 are not FDA approved drug products. Opium is not an FDA approved drug product. Plants such as opium only have medical use as source material for the products that are made from them. Under that same rationale, marijuana belongs in schedule 2 or lower here in Iowa. The principle drug made from opium, morphine, is in Iowa schedule 2, while the principle drug made from marijuana, dronabinol, is in Iowa schedule 3. Opium is in schedule 2 and morphine is in schedule 2, but only morphine is an FDA approved drug product. Marijuana should be reclassified, not for approval as a drug product, but solely because it is the source material for drug products in schedule 2 and 3 in Iowa. I submitted a statement from the American Academy of Neurology from December 17, 2014, explaining their rationale for recommending the rescheduling marijuana and I ask that you adopt their reasoning as your own. Please reconsider your decision not to recommend rescheduling of marijuana this year.

Respectfully Submitted:

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