

Exhibit #20

DRAFT

BEFORE THE IOWA BOARD OF PHARMACY

)	
)	BOARD’S 2015 RECOMMENDATION
PETITION FOR AGENCY ACTION)	FOR THE SCHEDULING OF
)	MARIJUANA
)	

On July 7, 2014, Carl Olsen filed a Petition for Agency Action requesting that the Iowa Board of Pharmacy recommend to the Iowa General Assembly the removal of marijuana from Schedule I. The Board first considered this Petition at its August 2014 meeting. The Board tabled consideration of the Petition in August and appointed a special committee to further study the request. The committee met on November 17, 2014 and invited public comment on the Petition. Numerous government agencies, advocacy groups, and private citizens provided both written and oral comments at the November 17th meeting. Both the committee and the Board have thoroughly reviewed the Petition and the submitted information. On November 19, 2014, the Board met in open session to deliberate and render a decision on the Petition.

It is the Board’s 2015 recommendation to the Iowa General Assembly that marijuana be removed from Schedule I. The Board does not make this recommendation lightly. The Board’s decision is based on two primary considerations. First, Iowa Code section 124.203 requires that this Board recommend the removal of a substance from Schedule I if the Board finds: (1) the substance does not have a high potential for abuse, or (2) the substance has *some* accepted medical use in treatment in the United States. While the Board believes that marijuana has a high potential for abuse, in 2014 the Iowa General Assembly passed the Medical Cannabidiol Act. That Act permits the use of cannabidiol for patients suffering from intractable epilepsy. The passage of this Act is an affirmative recognition by the Iowa General Assembly that there is some medical use for marijuana. Continued placement of marijuana in Schedule I is not consistent with this Act. Second, marijuana is currently classified as both a Schedule I and

Schedule II controlled substance in Iowa. The dual scheduling is a holdover from experimental research programs authorized more than thirty years ago. The dual scheduling has understandably lead to confusion as to this Board's authority to promulgate rules authorizing the legal use of medical marijuana. The Board does not believe it was the intention of the legislature for the Board to unilaterally establish, design, and implement a medical marijuana program in Iowa. Removing marijuana from Schedule I and removing any reference to rules promulgated by the Iowa Board of Pharmacy will eliminate this confusion.

The Petition does not request or suggest what schedule marijuana should be placed in— only that it be removed from Schedule I. The Board, however, believes it has an obligation under the Controlled Substances Act to recommend the proper schedule should marijuana be removed from Schedule I. The Board believes that marijuana is properly classified as a Schedule II. Iowa Code section 124.205 establishes three criteria for inclusion in Schedule II. Marijuana meets each of these criteria as the Board believes marijuana (1) has a high potential for abuse, (2) abuse of marijuana may lead to severe psychic or physical dependence, and (3) marijuana currently has accepted medical use with severe restrictions in the United States.

The Board wants to caution Iowans on both the limitations on this recommendation and the limitations of any rescheduling of marijuana. The Board is not recommending the legalization of marijuana or even the legalization of a medical marijuana program in Iowa. The Board is simply recommending that marijuana be reclassified as a Schedule II controlled substance. The Board is further recommending, as it did in 2010, that a coalition of stakeholders be established to further study the potential medical uses of marijuana in Iowa, including further expansion of the use of cannabidiol oil. These stakeholders should include, but not be limited to, the Office of Drug Control Policy, the Iowa Boards of Medicine and Pharmacy, law enforcement

agencies, academia, addiction treatment specialists, patients, and the alike. It is incumbent that the establishment of any medical marijuana include the perspectives of all of these groups, as no single entity can determine what conditions medical marijuana could be used to treat, what safety measures are needed to prevent the unlawful consumption of marijuana, especially by children and teens, and the myriad of other concerns raised by the potential establishment of a medical marijuana program in Iowa. This Board, in particular, has genuine concerns about the ability of any program to establish the standardization of dosage and potency necessary to ensure patient safety and effective treatment.

The rescheduling of marijuana will not automatically result in the legalization of medical marijuana in Iowa. Subsequent legislation will be needed, like the Medical Cannabidiol Act, to authorize the specific medical use of marijuana or marijuana derivatives. The establishment of any medical marijuana program will take sufficient time. The Board acknowledges that this may be difficult to hear for the many Iowans who sincerely believe that medical marijuana will alleviate, or even cure, their or their loved ones ailments.

Finally, the Board cautions that any state medical marijuana program may be superseded by the federal government. Marijuana remains a Schedule I controlled substances under federal law. As a matter of policy, the federal government has allowed states to serve as laboratories of democracy and experiment with medical marijuana programs. This, however, is a matter of policy and not of law. The federal government could change that policy at any time, thereby nullifying any action taken by the State of Iowa.

EDWARD MAIER
Chairperson, Iowa Board of Pharmacy

Exhibit #21

State of Iowa
Board of Pharmacy

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LADONNA GRATIAS
Clive

EDWARD J. McKENNA, R. Ph.
Storm Lake

MINUTES

November 18-19, 2014

The Iowa Board of Pharmacy met on November 18-19, 2014, in the conference room at 400 SW Eighth Street, Des Moines, Iowa. Chairperson Maier called the meeting to order at 9:00 a.m.

MEMBERS PRESENT

Edward L. Maier, Chairperson
James Miller, Vice-Chair
Susan M. Frey
LaDonna Gratias
Edward J. McKenna (left at 5:00 p.m.
on 11-19-14)
Sharon K. Meyer
Judith M. Trumpy

STAFF PRESENT

Lloyd Jessen, Executive Director
Meghan Gavin, Esq., Assistant Attorney
General
Laura Cathelyn, Esq., Assistant Attorney
General
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary

SPEAKERS

Brett Barker, NuCara
Helen Eddy, Hy-Vee
Megan Myers, IPA
Anthony Pudlo, IPA
Joel Kurzman, NACDS
Lisa Ploehn, Main at Locust
Michelle Garvin, Wester Drug
Cheri Schmit, Medicap
Mike Fuller, Walgreens
Chris Clayton, Unity Point Health
David Scofield, Hartig Drug
Patrick Shanahan, Hopkinton Drug
Stephanie Fawkes-Lee, FL & R

Compliance Officers Present:

Andrew Funk
Curt Gerhold
Mark Mather
Sue Mears
Jean Rhodes
Jennifer Tiffany
Jennifer O'Toole
Jim Wolfe

I. Administrative Hearing.

A. Medicap Pharmacy, Controlled Substance Registration No. 1106533 of Oskaloosa.

On May 28, 2014, the Iowa Board of Pharmacy found probable cause to file Statement of Charges and Notice of Hearing, and issued an Order to Show Cause against the above-named individual.

Laura Lockard, Administrative Law Judge for the State, presided. Assistant Attorney General Meghan Gavin represented the Board. Medicap Pharmacy did not appear nor did counsel represent the pharmacy. The hearing was open to the public.

The Board examined the exhibits.

II. Closed Session.

Motion (Frey/Trumpy) to go into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Frey/McKenna) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Gratias/Miller) to direct Administrative Law Judge Lockard to draft the decision of the Board in the Medicap Pharmacy case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

III. Closed Session.

Motion (Frey/Trumpy) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review complaint or investigative information required by Section 272C.6(4) to be kept confidential; 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; 21.5(1)(a) to review records required by state or federal law to be kept confidential, such as medical, mental health, or substance abuse records relating to non-licensee disciplinary issues; 21.5(1)(f) to discuss the decision to be rendered in a contested case; and 21.5(1)(d) to discuss the contents of a licensing examination. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Frey/Meyer) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

IV. Administrative Hearing.

A. Matthew Biggerstaff, Controlled Substance Registration No. 1306092 of Ankeny.

On August 26, 2014, the Iowa Board of Pharmacy issued an Order to Show Cause against the above-named individual.

Laura Lockard, Administrative Law Judge for the State, presided. Assistant Attorney General Meghan Gavin represented the Board. Matthew Biggerstaff was represented by Michael Sellers. The hearing was closed to the public.

The Board heard testimony of witnesses and examined the exhibits.

Motion (Miller/Frey) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

B. James Nielcen, Pharmacist License No. 14579, Waterloo.

On November 5, 2013, the Iowa Board of Pharmacy found probable cause to file Statement of Charges and Notice of Hearing against the above-named individual. On January 14, 2014, the Board placed Mr. Nielcen's pharmacist license on indefinite suspension. On November 18, 2014, Mr. Nielcen appeared before the Board for the purpose of requesting reinstatement of his pharmacist license.

Laura Lockard, Administrative Law Judge for the State, presided. Assistant Attorney General Meghan Gavin represented the Board. Mr. Nielcen appeared without counsel. The hearing was closed to the public.

The Board heard testimony of a witness and examined the exhibits.

Motion (Miller/McKenna) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

V. Approval of Minutes.

The Minutes of the August 26, 2014, meeting; the August 27, 2014, meeting; the September 11, 2014, teleconference meeting; the September 18, 2014, teleconference meeting; the October 2, 2014, teleconference meeting; the October 14, 2014, teleconference meeting; the October 16, 2014, teleconference meeting; and the October 28, 2014, teleconference meeting were read.

Motion (Frey/McKenna) to approve the minutes of the August 26, 2014, meeting. Passed: 7-0-0-0.

Motion (Miller/Gratias) to approve the minutes of the August 27, 2014, meeting. Passed: 7-0-0-0.

Motion (Miller/McKenna) to approve the minutes of the September 11, 2014, teleconference meeting. Passed: 7-0-0-0.

Motion (Frey/Miller) to approve the minutes of the September 18, 2014, teleconference meeting. Passed: 7-0-0-0.

Motion (Miller/McKenna) to approve the minutes of the October 2, 2014, teleconference meeting. Passed: 7-0-0-0.

Motion (Miller/Gratias) to approve the minutes of the October 14, 2014, teleconference meeting. Passed: 7-0-0-0.

Motion (Miller/Trumpy) to approve the minutes of the October 16, teleconference meeting.
Passed: 7-0-0-0.

Motion (Trumpy/McKenna) to approve the minutes of the October 28, 2014, teleconference meeting. Passed: 7-0-0-0.

VI. Amended Statement of Charges.

A. 2012-174 Kimberly Robertson, Pharmacist License No. 15845 of Des Moines.

Motion (Miller/Trumpy) to approve Amended Statement of Charges. Passed: 6-0-1-0.
Abstain: Frey. A copy of the Amended Statement of Charges is attached as Addendum A.

VII. Reports.

Executive Director's Report.

A. Financial.

FY15 as of 10/31/14 (33.33% of FY completed)

Revenue Anticipated:	\$ 3,833,933
Revenue Actual	\$ 2,009,327 (52%)
Carry-over from FY13	\$ 1,504,637
FY15 Fee Receipts	\$ 504,690
Budget Allocation	\$ 3,833,933
Obligations Actual	\$ 1,059,819 (28%)
Fines/Civil Penalties Collected	\$ 32,750

B. Meeting and Travel.

1. The January Board Meeting is scheduled for January 5-7, 2015, at the Board office in Des Moines. The meeting will begin at 1:00 p.m. on January 5, and conclude by 2:00 p.m. on January 7.
2. An Administrative Hearing for PCM Venture, LLC, Sandy, Utah, is scheduled for January 28-29, 2015, at the Board office in Des Moines.
3. The IPA Legislative Day will be held on January 29, 2015, in Des Moines.
4. The 2015 Midwest Pharmacy Expo will be held in Des Moines on February 13-15, 2015. The Board will present a pharmacy law presentation on Sunday, February 15.
5. The March Board Meeting is scheduled for March 10-11, 2015, at the Board office in Des Moines.
6. The next Rules Committee Meeting is scheduled for January 27, 2015, at the Board office in Des Moines.

C. Baum Harmon Mercy Hospital, Primghar -- Quarterly Waiver Report.

Baum Harmon Mercy Hospital submitted their Quarterly Waiver Report for review. The Board requested the pharmacy provide additional documentation in their reports regarding how the pharmacy is improving their practice of pharmacy and working to eliminate errors.

D. Iowa Board of Medicine Votes to Establish Standards for Physicians Who Use Telemedicine. Informational item.

E. Allen Hospital, Waterloo – Tech-Check-Tech Quarterly Update.

Allen Hospital submitted their Tech-Check-Tech Quarterly Report for review.

F. NuCara Pharmacy 10, Pharmacy License No. 78, Story City – Tech-Check-Tech Report.

NuCara Pharmacy submitted their Tech-Check-Tech Report for review.

G. Hy-Vee Pharmacy Fulfillment Center Third Quarter Error Report.

Hy-Vee Pharmacy Fulfillment Center submitted their third Quarterly Error Report for review.

H. Phase One – Second Quarterly Report -- New Practice Model – Megan Myers, Iowa Pharmacy Association.

The Iowa Pharmacy Association and Drake University College of Pharmacy provided their second Quarterly New Practice Model Report for review.

I. Pharmacy Meeting with Wellmark.

Susan Frey and Sharon Meyer attended the meeting. Wellmark is seeking pharmacist input into their next round of contract negotiations. The Board discussed sending a letter, as an informational piece, to Wellmark regarding issues they have encountered.

J. TakeAway Program Update – Anthony Pudlo, Iowa Pharmacy Association.

Discussion was held regarding the TakeAway Medication Disposal Program; Federal Legislation and Regulations; MedSafe and Yellow Jug as future options for the program; projected growth of the TakeAway Program with the addition of controlled substances; and projected annual cost of an Iowa Medication Disposal Program.

K. Point-of-Care Testing Presentation – Anthony Pudlo, Iowa Pharmacy Association, and Joel Kurzman, Director, State Government Affairs National Association of Chain Drug Stores.

The definition of Point-of-Care Testing was discussed and how pharmacists play an active role in the designing, implementing, and monitoring of therapeutic plans to produce specific therapeutic outcomes for patients. Discussion was held regarding if Point-of-Care Testing would be allowed under the Iowa Board of Pharmacy rules; if pharmacists could provide this level of Point-of-Care Testing; and how pharmacists could work within the current rules with collaborative practice agreements or if it would be expanded through a state-wide protocol opportunity. The Rules Committee will review this issue.

VIII. Requests.

A. Petition to Request Reclassification of Marijuana – Carl Olsen, Des Moines.

Motion (Miller/Trumpy) to table the Board's 2015 Recommendation for the Scheduling of Marijuana. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

B. Annual Review of Fees.

Motion (Frey/Trumpy) to approve the annual review of licensing and registration fees for FY15 and to continue licensing and registration fees at the current level. Passed: 7-0-0-0.

C. Request for Waiver -- 657 I.A.C. 8.35 Pharmacy License – Dr. Nathan Harold, PharmD, RPh, Clinical Pharmacy Manager, Pharmacist License No. 21780, Dubuque.

A letter will be sent to Mr. Harold notifying him a waiver request is not necessary.

D. License Reactivation – Sumitra Patel, Pharmacist License No. 14334, Bowling Green, Kentucky.

Motion (Miller/Frey) Ms. Patel complete 1,000 hours of internship, take and pass the NAPLEX and MPJE Examinations within 18 months, beginning November 19, 2014. Passed: 7-0-0-0.

E. Request for Internship Credit for Life Experience – Emma Awad, Bettendorf.

Motion (Miller/Gratias) to grant 1,000 hours of internship in lieu of life experience and require Ms. Awad to complete an additional 500 hours of internship. Passed: 7-0-0-0.

F. Phase Two – A Pharmacy Pilot or Demonstration Research Project for a New Practice Model for Community Pharmacy – Megan Myers, Iowa Pharmacy Association.

Motion (Miller/Trumpy) to approve the request. Passed: 6-1-0-0. No: Frey.

- G. Request to Have Charges Stricken from Website – Kevin Christians, Pharmacist License No. 18426, Coralville.

Motion (Frey/Trumpy) to deny the request. Passed: 7-0-0-0.

IX. Licensure/Registration.

- A. Initial Pharmacy Support Person Registration Application – Rhonda Macy, Des Moines.

Motion (Miller/Frey) to deny the application. Passed: 7-0-0-0.

- B. Initial Pharmacy Support Person Registration Application – Jacqueline Cobb, Sioux City.

Motion (Miller/Trumpy) to approve the application. Passed: 7-0-0-0.

- C. Application for Pharmacy Technician Trainee Registration/Initial Pharmacy Support Person Registration Application -- Stephanie Wadell, Orange City.

Motion (Frey/Trumpy) to deny the applications. Passed: 6-1-0-0. No: Miller.

- D. Iowa Wholesale Drug License Application – Sun Pharmaceutical Industries, Inc., Cranbury, New Jersey.

Motion (Frey/Miller) to deny the application. Passed: 7-0-0-0.

- E. Withdrawal of Nonresident Pharmacy Application – Hopkinton Drug, Hopkinton, Massachusetts.

Motion (Frey/Trumpy) to close due to application being withdrawn. Passed: 7-0-0-0.

- F. New Nonresident Pharmacy Application Review – Edge Pharmacy Services, Colchester, Vermont.

Motion (Miller/Gratias) to approve the application. Passed: 7-0-0-0.

- G. Application for Pharmacy Technician Trainee Registration – Michelle Heidebrink, Oskaloosa.

Motion (Miller/Gratias) to deny the application. Passed: 7-0-0-0.

X. Rules.

- A. Proposed for Adoption and Filing – Chapter 3, “Pharmacy Technicians.”

Motion (Frey/Gratias) to approve for Adoption and Filing. Passed: 7-0-0-0. A copy is attached as Addendum B.

- B. Proposed for Adoption and Filing – Chapter 4, “Pharmacist Interns,” and Chapter 8, “Universal Practice Standards.”

Motion (Trumpy/Frey) to approve for Adoption and Filing. Passed: 7-0-0-0. A copy is attached as Addendum C.

- C. Proposed for Adoption and Filing – Chapter 10, “Controlled Substances.”

Motion (Miller/Frey) to approve for Adoption and Filing as amended. Passed: 7-0-0-0. A copy is attached as Addendum D.

- D. Proposed for Adoption and Filing – Chapter 19, “Nonresident Pharmacy Practice.”

Motion (Frey/Miller) to approve for Adoption and Filing. Passed: 7-0-0-0. A copy is attached as Addendum E.

- E. Proposed for Adoption and Filing – Chapter 33, “Military Service and Veteran Reciprocity.”

Motion (Miller/Trumpy) to approve for Adoption and Filing. Passed: 7-0-0-0. A copy is attached as Addendum F.

- F. Notice of Intended Action – Chapter 8, “Universal Practice Standards.”

Motion (Frey/McKenna) to approve for filing Notice of Intended Action. Passed: 7-0-0-0. A copy is attached as Addendum G.

- G. Notice of Intended Action – Chapter 3, “Pharmacy Technicians,” Chapter 6, “General Pharmacy Practice,” and Chapter 7, “Hospital Pharmacy Practice”; to Rescind Chapter 13, “Sterile Compounding Practices”; and to Rescind Chapter 20, “Pharmacy Compounding Practices,” and adopt a new Chapter 20, “Compounding Practices.”

Motion (Trumpy/Miller) to approve for filing Notice of Intended Action. Passed: 7-0-0-0. A copy is attached as Addendum H.

- H. Notice of Intended Action – Chapter 36, “Discipline.”

Motion (Frey/Trumpy) to approve for filing Notice of Intended Action. Passed: 7-0-0-0. A copy is attached as Addendum I.

- I. Notice of Intended Action – Chapter 6, “General Pharmacy Practice,” Chapter 7, “Hospital Pharmacy Practice,” Chapter 8, “Universal Practice Standards,” Chapter 9, “Automated Medication Distribution Systems and Telepharmacy Services,” Chapter 15, “Correctional Pharmacy Practice,” Chapter 18, “Centralized Prescription Filing and Processing,” Chapter 19, “Nonresident Pharmacy Practice,” Chapter 22, “Unit Dose, Alternative Packaging, and Emergency Boxes,” and Chapter 23, “Long-Term Care Pharmacy Practice.”

Motion (Frey/McKenna) to approve for filing Notice of Intended Action. Passed: 7-0-0-0.
A copy is attached as Addendum J.

XI. Legislation.

A. Proposed Legislative Changes Relating to Pharmacy Practice.

An Act relating to nonresident pharmacy and outsourcing facility licensure, pharmacist supervision of pharmacy technicians, alternate board members, enforcement authority, and various definitions regarding pharmacy practice.

Motion (Trumpy/Frey) to approve legislative changes. Passed: 7-0-0-0.

B. Proposed Legislative Changes Relating to Controlled Substances.

An Act making changes to controlled substances schedules and making penalties applicable.

Motion (Trumpy/Frey) to approve legislative changes. Passed: 7-0-0-0.

C. Establishment of Prescription Monitoring Program's Task Force/Advisory Group.

The Board discussed establishing a Prescription Monitoring Program (PMP) Task Force/Advisory Group in 2015. The Board directed staff to move forward with forming an Advisory Group composed of interested parties, including the law enforcement community.

XII. Closed Session.

Motion (Frey/Meyer) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review complaint or investigative information required by Section 272C.6(4) to be kept confidential; and 21.5(1)(a) to review records required by state or federal law to be kept confidential, such as medical, mental health, or substance abuse records relating to non-licensure disciplinary issues. Roll call vote. Yes: Frey, Gratias, Maier, Meyer, Miller, Trumpy; No: None; Abstain: McKenna; Absent: None. Passed: 6-0-1-0.

Motion (Frey/Trumpy) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, Meyer, Miller, Trumpy; No: None; Abstain: McKenna; Absent: None. Passed: 6-0-1-0.

XIII. Closed Session.

Motion (Frey/Miller) to go into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Gratias/Miller) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Frey/Trumpy) to direct Administrative Law Judge Lockard to draft the decision of the Board in the Nielcen case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Frey/Trumpy) to direct Administrative Law Judge Lockard to draft the decision of the Board in the Biggerstaff case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

XIV. Complaints Against Non-Licensees.

A. 2014-113 – CanineCare US, Collegeville, Pennsylvania.

Motion (Miller/Gratias) to close with no action. Passed: 7-0-0-0.

B. 2014-131 – Better Off Healthy, Boca Raton, Florida.

Motion (Frey/Trumpy) to close with no action. Passed: 7-0-0-0.

C. 2014-134 – K-Mart Pharmacy No. 7306, Sioux Falls, South Dakota.

Motion (Miller/Frey) to close with no action. Passed: 7-0-0-0.

D. 2014-154 – Enovachem Manufacturing, Torrance, California.

Motion (Trumpy/McKenna) to close with no action. Passed: 7-0-0-0.

E. 2014-164 -- Iowa Medicaid Enterprise, Des Moines.

Motion (Frey/Trumpy) to refer to the Iowa Medicaid Drug Utilization Review Commission. Passed: 7-0-0-0.

XV. Closed Session.

Motion (Frey/Trumpy) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review complaint or investigative information required by Section 272C.6(4) to be kept confidential; 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; 21.5(1)(a) to review records required by state or federal law to be kept confidential, such as medical, mental health, or substance abuse records relating to non-licensee disciplinary issues; and 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

Motion (Trumpy Frey) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: None. Passed: 7-0-0-0.

In open session the following actions were taken.

A. Administrative Warning.

Motion (Miller/Frey) to send an Administrative Warning to the pharmacy in 2013-149, pharmacies in 2014-3, pharmacy in 2014-4, pharmacist in 2014-117, pharmacy and pharmacist in charge in 2014-135, pharmacy and pharmacist in charge in 2014-136, and pharmacy and pharmacist in charge in 2014-152. Passed: 6-0-0-1. Absent: McKenna.

B. Administrative Warning.

Motion (Frey/Gratias) to send an Administrative Warning to the CSA Registrant in 2014-149. Passed: 5-0-1-1. Abstain: Miller; Absent: McKenna.

C. Letter of Education.

Motion (Miller/Gratias) to send a letter of Education to the pharmacy and pharmacist in charge in 2014-128, pharmacy and pharmacist in charge in 2014-151, pharmacist in charge and technician in 2014-153, pharmacy and pharmacist in charge in 2014-161, pharmacy and pharmacist in charge in 2014-162, pharmacy and pharmacist in charge in 2014-163, and pharmacy in 2014-165. Passed: 6-0-0-1. Absent: McKenna.

D. Settlement Agreement and Final Order.

Motion (Miller/Frey) to approve the Settlement Agreement and Final Order in the following cases. Passed: 6-0-0-1. Absent: McKenna.

1. ExcellenceRx, Nonresident Pharmacy License No. 3435 of Memphis, Tennessee. A copy of the Settlement Agreement and Final Order is attached as Addendum K.
2. Thomas Snyder, Pharmacist License No. 13427 of Sheldon. A copy of the Settlement Agreement and Final Order is attached as Addendum L.
3. Peggy Ashby, Pharmacy Technician Registration No. 15487 of North Liberty. A copy of the Settlement Agreement and Final Order is attached as Addendum M.
4. Belmar Pharmacy, Nonresident Pharmacy License No. 3975 of Lakewood, Colorado. A copy of the Settlement Agreement and Final Order is attached as Addendum N.
5. Katie Meldrem-Ferneau, Pharmacy Technician Registration No. 20489 of Pella. A copy of the Settlement Agreement and Final Order is attached as Addendum O.
6. Kate Klingborg, Pharmacy Support Person Registration No. 2268 of Muscatine. A copy of the Settlement Agreement and Final Order is attached as Addendum P.

E. Combined Notice of Hearing and Statement of Charges.

Motion (Miller/Frey) to approve the Combined Notice of Hearing and Statement of Charges in the following cases. Passed: 6-0-0-1. Absent: McKenna.

1. Matthew Sherrow, Pharmacist License No. 18612 of Springfield, Illinois. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum Q.

2. Robert Osborn, Pharmacist License No. 19079 of Rock Island, Illinois. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum R.
3. Dutch Mill Pharmacy, Pharmacy License No. 445 of Orange City. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum S.
4. Brent Plender, Pharmacist License No. 17651 of Orange City. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum T.
5. Dwayne A. Plender, Pharmacist License No. 13561 of Orange City. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum U.
6. Leeds Pharmacy, Pharmacy License No. 227 of Sioux City. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum V.
7. Thomas B. Dodds, Pharmacist License No. 12951 of Dakota Dunes, South Dakota. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum W.
8. Rashid LTC Pharmacy, Pharmacy License No. 1129 of Fort Madison. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum X.
9. David Tracey King, Pharmacist License No. 19586 of Burlington. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum Y.
10. Brady Rolfes, Pharmacy Technician Registration No. 18729 of Iowa City. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum Z.
11. OK Compounding LLC, Nonresident Pharmacy License No. 4204 of Skiatook, Oklahoma. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum AA.

F. Confidential Order for Evaluation.

Motion (Frey/Gratias) to approve the Confidential Order for Evaluation in 2013-167. Passed: 6-0-0-1. Absent: McKenna.

G. Closed With No Action.

Motion (Miller/Gratias) to close with no further action the investigative file in complaint numbers: 2012-195, 2013-3643, 2013-3779, 2014-76, 2014-107, 2014-139, 2014-140, 2014-141, 2014-142, 2014-146, 2014-148, 2014-155, 2014-157, 2014-160, and 2014-176. Passed: 6-0-0-1. Absent: McKenna.

H. Draft Statement of Charges.

Motion (Miller/Frey) to draft Statement of Charges against the stated individuals in the following complaints: technician trainee in 2014-116, technician in 2014-144, technician in 2014-147, pharmacist in 2014-156, and pharmacist in 2014-175. Passed: 6-0-0-1. Absent: McKenna.

I. Draft Confidential Order for Evaluation.

Motion (Gratias/Trumpy) to draft a Confidential Order for Evaluation against the pharmacist in 2014-119 and pharmacist in 2014-151. Passed: 6-0-0-1. Absent: McKenna.

J. Draft Order to Show Cause.

Motion (Miller/Gratias) to draft an Order to Show Cause against the CSA registrant in 2014-145 and CSA registrant in 2014-172. Passed: 6-0-0-1. Absent: McKenna.

Meeting adjourned at 5:40 p.m. on November 19, 2014.

Becky Hall

Becky Hall
Recording Secretary

Lloyd K. Jessen

Lloyd K. Jessen
Executive Director

Edward L. Maier

Edward L. Maier
Board Chair

APPROVED THIS 6th DAY OF January, 2015.

Exhibit #22

EDWARD MAIER: So, that entire document is what the committee has recommended to the board. I would now open it for discussion or any action that the board would like to take.

SUSAN FREY: Well, I would like to thank the committee for their work. I think it, this document and these recommendations, sum up what we have been trying to do for the last five years that we've been looking at this project, or this subject. So, I would be in support of the committee recommendation.

JAMES MILLER: I, too, would like to thank the committee for all its work, and it's certainly been a worrisome issue since 2009 or before. I think there's a lot to this document that Ed has just read and we just received it in copy a few minutes ago to review. I would be in favor of tabling this thing until at least until our next meeting so we have time to review it more thoroughly. I'm especially concerned about the last paragraph, that the Iowa Board of Pharmacy making a rule about schedule changes when this is clearly the purview of the federal government. We just went through a situation in Iowa where hydrocodone, one of the most widely prescribed opiate pain relievers in our state, and in the whole country; and we schedule it as a schedule 3 in Iowa until the federal government said, "No, it's going to be a schedule 2." We could have a petition saying, "You know what? In Iowa I think we're just going to leave it in schedule 3." That was not our ability to do that. The federal government decides what schedule things are in. So, I think we should take our time as far as making any further recommendations. So, I would move that we table this. Give it some more thought.

EDWARD MAIER: Do we have any discussion?

SUSAN FREY: Jim does bring up an interesting point. And, again, we find ourselves in that quandary of we already have the established, the legislative established cannabidiol act. I would certainly be willing to table it and hear more.

EDWARD MAIER: That was the quandary that the committee placed ourselves in. We knew that number one we could have a recommendation straight out against because of the federal class 1. And, then we could look at Iowa law, the act this last year, the cannabidiol act has placed us in a position where Iowa law, it meets all the criteria of for class 2. We're into the catch-22, so to speak here.

JAMES MILLER: I would say that Iowa legislators are elected representatives of the citizens of Iowa. We are not elected representatives. We have different scope and service to the citizens. The elected body can choose to do whatever they wish. But as an Iowa citizen, I'm a citizen of Iowa, and so I'm subject to Iowa laws. I'm also a citizen of the United States. So, I'm subject to federal laws. I'm not attorney. My recollection is federal law supersedes. So, I think even, regardless of what the Iowa legislature does, as a citizen I have to kind of be thinkin', "Hmm, I wonder which set of laws are we going to be under?"

EDWARD MAIER: And, I think it's important that no matter which way this goes, this is simply a recommendation to the legislature and the legislature then would have to take action and the governor would have to sign that. It would have to be, go through the regular channels. And, it's a difficult, very difficult matter.

JAMES MILLER: I think it's extremely difficult. But I also think that there's some credibility here as far as the board and what our role is and that we maintain our diligence as far as the safety of the citizens of Iowa. And, we'll be looked at to establish the safety of the drug products that we currently take responsibility for. Marijuana wouldn't fall into that category at all: the standardization of dose; as far as proven efficacy; as far as proven safety. I think that clearly is outside of the bounds of our expertise.

EDWARD MAIER: Any other comments?

EDWARD MCKENNA: I agree with Jim, because I think that the marijuana oil that people use for epilepsy, the University of Iowa is monitoring that program. Right? So, I think we need more information that the oil is actually working. That program was just implemented.

Exhibit #23

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654

December 1, 2014

Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

To the Iowa Board of Pharmacy:

Thank you for considering my petition for marijuana scheduling on Wednesday, November 19, 2014. I would like to thank the members of the subcommittee, Edward Maier, Sharon Meyer, and LaDonna Gratias, for their outstanding work which is both accurate and detailed. I am pleased with the subcommittee's proposed ruling and ask that the full board adopt it as your recommendation to the Iowa legislature at your next regularly scheduled board meeting on January 5, 2015.

At the meeting on November 19, 2014, some members of the board asked for more time to consider the subcommittee's proposal and expressed concern with the relationship between state and federal scheduling. I'm pleased that the board wants to take a closer look at this proposal.

1. BACKGROUND INFORMATION

I will start by mentioning some of the history involved in marijuana's classification at the international, national, and state level. I submitted a document for the subcommittee hearing from the Expert Committee on Drug Dependence (ECDD) of the World Health Organization (WHO) that gives a good summary of the historical background at the international level. I hope you have taken the time to review it.

Our national and state controlled substances acts were written to comply with these international treaties, the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971. Marijuana was added to

schedules 1 and 4 of the Single Convention in 1961 and THC was added to schedule 1 of the Convention on Psychotropic Substances in 1971. The first thing to note is that THC (the principle psychoactive ingredient in marijuana) was scheduled less restrictively than marijuana when it was added in 1971.

International schedule 4 is the equivalent of our state schedule 1, and international schedule 1 is the approximate equivalent of our state schedule 2. So, THC was classified as good for limited medical use in 1971, after marijuana had been classified as being good for nothing in 1961.

To provide some contrast, the opium plant, the coca plant, morphine, and cocaine were all placed in schedule 1 of the Single Convention in 1961, because all of them had some limited medical use at that time. When THC was added to international schedule 1 in 1971, the scheduling of marijuana was not adjusted accordingly by removing it from international schedule 4. When THC was down scheduled to international schedule 2 in 1991, marijuana still got left behind in international schedule 4 (the most restrictive schedule).

Transfer of delta-9-THC and its stereochemical variants from Schedule 1 to Schedule 2 of the Convention on Psychotropic Substances, 1971:

https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/1990-1999/1991/CND_Decision-34-2_XXXIV.pdf

<https://cms.unov.org/llsulinkbase/contenttree.aspx?nodeID=1832>

Schedule 4 of the international treaties is for substances that have no medical use, which raises the obvious question of where THC comes from if you're not getting it from a marijuana plant. Marijuana's classification has not been reviewed by the international health organization since 1935. The World Health Organization is currently reviewing the classification of marijuana. I'm fairly optimistic the WHO is going to recommend down scheduling of marijuana at the international level in 2016, but that's hard to determine at this time. Obviously, the United States is moving us in that direction.

At the federal level, marijuana and THC were both placed in schedule 1 in 1970, and at the state level here in Iowa, marijuana and THC were both placed in schedule 1 of the Iowa Uniform Controlled Substances Act in 1971, consistent

with both having no accepted medical use in treatment anywhere in the United States at that time.

THC (synthetic only) has been down scheduled twice at the federal level, to schedule 2 in 1986, and to schedule 3 in 1999. **51 Fed. Reg. 17476 (May 13, 1986); 64 Fed. Reg. 35928 (July 2, 1999)**. Synthetic THC has also been down scheduled twice at our state level here in Iowa, to schedule 2 in 1986, and to schedule 3 in 2000. **1986 Iowa Acts Chapter 1037 § 4 (April 7, 1986); 2000 Iowa Acts Chapter 1140 § 10 (April 25, 2000)**.

The unusual thing about THC's scheduling is that both federal and state law made a distinction between naturally occurring THC and synthetic THC, leaving the naturally occurring THC in schedule 1 and transferring only synthetic THC to schedule 2 and then to schedule 3. This distinction has never existed at the international level. Both naturally occurring and synthetic THC were transferred to international schedule 2 in 1991. Iowa has since that time corrected this distinction by transferring naturally occurring THC to state schedule 3 here in Iowa in 2008. **Iowa Code § 124.208(9) (2014). 2008 Iowa Acts Chapter 1010 § 4 (March 5, 2008)**. The federal government proposed moving naturally extracted THC in 2010, **75 Fed. Reg. 67054 (2010)**, but naturally occurring THC remains in federal schedule 1 as of this date. So, here you have an example of where Iowa is not following federal scheduling on naturally occurring THC. Iowa is leading instead of following. If you read the federal proposal you'll see the reasoning the federal government makes is that a molecule is still that same molecule whether it occurs naturally or it's made synthetically.

The recent Medical Cannabidiol act our state enacted on July 1, 2014, is another example of where our state is not following federal scheduling. Cannabidiol (CBD) is the main non-psychoactive chemical component of marijuana. The US Department of Health and Human Services (HHS) was awarded United States Patent #6,630,507 for CBD and other cannabinoids on Oct. 7, 2003. Cannabidiol is in federal schedule 1. The federal chemical code for cannabidiol is 7372. See:

http://www.deaiversion.usdoj.gov/drugreg/reg_apps/225/225_instruct.htm

http://www.deaiversion.usdoj.gov/fed_regs/impert/app/2008/fr08064.htm

Iowa is leading instead of following the federal scheduling of cannabidiol. This is not just some mishap or constitutional abnormality; it's a pattern.

You can see a similar pattern at the international level where it was the United States that requested the down scheduling of THC in 1991. **Report on the 27th session, Expert Committee on Drug Dependence (1991)**, at pages 9-12: http://whqlibdoc.who.int/trs/WHO_TRS_808.pdf?ua=1. The international, national, and state systems of substance control are not designed to be top down. It's a comprehensive system driven from the bottom up. Local government represents the people and this is where the process begins. The international treaties all have limitation clauses in them which protect constitutional due process of the signatory parties.

Marijuana's placement in federal schedule 1 in 1970 was so controversial that Congress appointed a commission to study it. "The Commission recommended that 'the United States take the necessary steps to remove cannabis from the Single Convention on Narcotic Drugs (1961), since this drug does not pose the same social and public health problems associated with the opiates and coca leaf products.'" **NORML v. DEA**, 559 F.2d 735, 751 n.7 (D.C. Cir. 1977).

Marijuana is the only substance in schedule 1 with a long history of medical use in treatment in the United States.

First, while California in 1996 became the first of the sixteen states that currently legalize medical marijuana, the history of medical marijuana goes back much further, so that use for medical purposes was not unthinkable in 1990. At one time, "almost all States ... had exceptions making lawful, under specified conditions, possession of marihuana by ... persons for whom the drug had been prescribed or to whom it had been given by an authorized medical person." **Leary v. United States**, 395 U.S. 6, 17, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969). What's more, the Federal government itself conducted an experimental medical marijuana program from 1978 to 1992, and it continues to provide marijuana to the surviving participants. See **Conant v. Walters**, 309 F.3d 629, 648 (9th Cir. 2002). The existence

of these programs indicates that medical marijuana was not a concept utterly foreign to Congress before 1996.

James v. Costa Mesa, 700 F.3d 394, 409 (9th Cir. 2012) (Berzon, J., dissenting). And, of course, marijuana is the only substance in schedule 1 that has been accepted for medical use in treatment in any state since 1970. Marijuana now has accepted medical use in treatment in thirty-four states and in two federal jurisdictions, DC and Guam.

2. **OUR LEGISLATURE HAS GIVEN THE BOARD EXPLICIT INSTRUCTIONS**

Our state legislature has given the board the following instructions. If a substance has a high potential for abuse, it must be placed in either schedule 1 or schedule 2. **Iowa Code §§ 124.203(1)(a) and 124.205(1)(a) (2014)**. If a substance has accepted medical use in treatment in the United States, it cannot be placed in schedule 1 and must be placed in one of the other four schedules or removed from the schedules entirely. **Iowa Code §§ 124.203(1)(b) and 124.203(2) (2014)**. If a substance has both accepted medical use in treatment in the United States with severe restrictions and a high potential for abuse, then it must be placed in schedule 2. **Iowa Code §§ 124.205(1)(a) and 124.205(1)(b) (2014)**.

This is not the first time the board has considered marijuana's classification. As the result of a petition for marijuana scheduling I filed with the board in 2008, the board held a series of public hearings in four cities across the state. These hearings were prompted by an Iowa District Court ruling in ***McMahon v. Iowa Board of Pharmacy***, Polk County No. CVCV007415 (April 21, 2009) (judicial review of my 2008 petition for marijuana scheduling). "Both Schedule 1 and Schedule 2 controlled substances share the same characteristic of having a high potential for abuse. 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 124.202." ***Id.*** at 4 n.1. "The Board must determine whether the evidence presented by Petitioner is sufficient to support a finding that marijuana has accepted medical use in the United States and does not lack accepted safety for use in treatment under medical supervision." ***Id.*** at 5.

The only evidence I presented in 2008 was the existence of twelve state laws defining marijuana as medicine. I said that the existence of state laws defining marijuana as medicine proves that marijuana has accepted medical use in treatment in the United States as a matter of law. The board was obviously uncomfortable with accepting a legal argument without looking at the eight factors our legislature has instructed the board to consider in making scheduling decisions. **Iowa Code § 124.201(1)(a)-(h) (2014)**. The board decided to take input from the public over a period of four months (from August of 2009 through November of 2009) and in four public hearings held in various cities across the state. On February 17, 2010, the board voted unanimously to recommend our legislature remove marijuana from state schedule 1 in Iowa.

Our state legislature has not authorized the board to consider federal scheduling in determining whether marijuana continues to meet the conditions for placement in schedule 1. Federal scheduling is not one of the eight factors the legislature has instructed the board to consider. **Iowa Code § 124.201(1)(a)-(h) (2014)**. The only instance where the legislature requires the board to consider federal scheduling is when the federal government adds a new substance to the federal schedules. **Iowa Code § 124.201(4) (2014)**. When the federal government does add a new substance to the federal schedules, the board is not legally bound to make that same recommendation to the Iowa legislature. **Iowa Code § 124.201(4) (2014); 657 IAC 10.37(3)**. Similarly, the Iowa legislature is not legally bound to follow federal scheduling decisions. **Iowa Code § 124.201(4) (2014)**. This is no mere accident on the part of our legislature, it is a consistent pattern.

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” ***Bond v. United States***, 572 U.S. ___, ___, 134 S. Ct. 2077, 2087 189 L. Ed. 2d 1, 10 (2014). “It is incumbent upon the federal courts to be certain of Congress’ intent before finding that federal law overrides the usual constitutional balance of federal and state powers.” ***Gregory v. Ashcroft***, 501 U.S. 452, 460, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991) (quoting ***Atascadero State Hospital v. Scanlon***, 473 U.S. 234, 243, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985)). “Congress normally preserves ‘the constitutional balance between the National Government and the States.’” ***Bond v. United States***, 564 U.S. ___, ___, 131 S. Ct. 2355, 2364, 180 L. Ed. 2d 269, 280 (2011).

“The CSA explicitly contemplates a role for the States in regulating controlled substances, as evidenced by its pre-emption provision.” **Gonzales v. Oregon**, 546 U.S. 243, 251 (2006)¹. “The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.” **Id.** at 258. “Congress did not delegate to the Attorney General authority to carry out or effect all provisions of the CSA. Rather, he can promulgate rules relating only to ‘registration’ and ‘control,’ and ‘for the efficient execution of his functions’ under the statute.” **Id.** at 259. “As for the federal law factor, though it does require the Attorney General to decide ‘[c]ompliance’ with the law, it does not suggest that he may decide what the law says. Were it otherwise, the Attorney General could authoritatively interpret ‘State’ and ‘local laws,’ which are also included in 21 U.S.C. § 823(f), despite the obvious constitutional problems in his doing so.” **Id.** at 264. “The statute and our case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States ‘great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.’ **Medtronic, Inc. v. Lohr**, 518 U.S. 470, 475, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (quoting **Metropolitan Life Ins. Co. v. Massachusetts**, 471 U.S. 724, 756, 105 S. Ct. 2380, 85 L. Ed. 2d 728 (1985)).” **Id.** at 269-270.

“Even though regulation of health and safety is ‘primarily, and historically, a matter of local concern,’ **Hillsborough County v. Automated Medical Laboratories, Inc.**, 471 U.S. 707, 719, 105 S. Ct. 2371, 85 L. Ed. 2d 714 (1985), there is no question that the Federal Government can set uniform national

¹ “No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.” 21 U.S.C. § 903 (Pub. L. 91-513, title II, §708, Oct. 27, 1970, 84 Stat. 1284).

standards in these areas. See *Raich*, supra, at 9, 125 S. Ct. 2195, 162 L. Ed. 2d 1. In connection to the CSA, however, we find only one area in which Congress set general, uniform standards of medical practice. Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, of which the CSA was Title II, provides that

‘[The Secretary], after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.’ § 4, 84 Stat. 1241, codified at 42 U.S.C. § 290bb-2a.

“This provision strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute.” *Id.* at 271-272.

Transferring marijuana from state schedule 1 to state schedule 2 does not promote drug abuse, because the potential for abuse of substances in our state schedule 1 is identical to the potential for abuse for substances in our state schedule 2. Our state schedule 2 does not promote the unauthorized use (abuse) of any controlled substance.

Likewise, our state schedule 2 does not create any positive conflict with federal law, because it does not authorize anyone to use, prescribe, or dispense any controlled substance without a federal license. Our legislature was not unaware of the 1970 federal scheduling scheme when it adopted the Uniform Controlled Substances Act in 1971. Our state legislature understood that state scheduling can be different than federal scheduling and that is exactly what the legislature intended. This is called due process.

It would be absurd to say that marijuana does not have accepted medical use in treatment in the United States in the face of thirty-four state laws that accept its medical use, as well as the two federal jurisdictions of DC and Guam. Our

legislature saw the possibility of this change in circumstances when it set the conditions for placement in state schedule 1 back in 1971.

The federal courts have provided us with instructions on how to interpret the federal controlled substances act. “Neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use.’” *Alliance for Cannabis Therapeutics v. Drug Enforcement Administration*, 930 F.2d 936, 939 (D.C. Cir., 1991). “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.” *Grinspoon v. DEA*, 828 F.2d 881, 886 (1st Cir. 1987).

3. IOWA’S SCHEDULES ARE NOT IDENTICAL TO THE FEDERAL SCHEDULES

Our state schedule 3 includes products containing natural dronabinol (derived from the cannabis plant), which are in federal schedule 1. **Iowa Code § 124.208(9) (2014). 2008 Iowa Acts Chapter 1010 § 4 (March 5, 2008).** Although the federal government has proposed a rule to transfer products containing natural dronabinol (derived from the cannabis plant) from federal schedule 1 to federal schedule 3, this rule has never been finalized. See **Federal Register, Vol. 75, No. 210 / Monday, November 1, 2010 / Proposed Rules, at page 67054**, “Listing of Approved Drug Products Containing Dronabinol in Schedule III,” (“Dronabinol is a name of a particular isomer of a class of chemicals known as tetrahydrocannabinols (THC). Specifically, dronabinol is the United States Adopted Name (USAN) for the (-)-isomer of [Delta]\9\-(trans)-tetrahydrocannabinol [(-)-[Delta]\9\-(trans)-THC], which is believed to be the major psychoactive component of the cannabis plant (marijuana).” *Id.* at page 67055). Our legislature approved this change over 2 years before the federal government even proposed making the same change in the federal schedules. As of this time, the federal government still classifies products containing naturally derived dronabinol as federal schedule 1 substances.

The inconsistency between state and federal scheduling does not create any positive conflict between our state and federal law. No federal law is broken when a state reclassifies a controlled substance to a different schedule than the federal government. States are not required to have the same schedules or even the same

criteria for inclusion in the schedules. See, for example, *State v. Eells*, 72 Or. App. 492, 696 P.2d 564 (1985), review denied by 299 Ore. 313, 702 P.2d 1110 (1985) (“Although Or. Rev. Stat. § 475.005(6) states that a controlled substance is defined by reference to the schedules under the Federal Controlled Substances Act, 21 USC §§ 811 to 812, the statute does not adopt the federal criteria, as Oregon has its own standards for amendment of the schedule, as set out in Or. Rev. Stat. § 475.035”).

4. STATE MEDICAL MARIJUANA LAWS ARE NOT PREEMPTED BY FEDERAL LAW UNLESS THEY SPECIFICALLY REQUIRE THE VIOLATION OF FEDERAL LAW

A state can create exemptions from its criminal laws without violating any federal law. *New York v. United States*, 505 U.S. 144, 120 L. Ed. 2d 120, 112 S. Ct. 2408 (1992), and *Printz v. United States*, 521 U.S. 898, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997). Exempting medical use of marijuana is unique because of the reason given for the exemption, “medical use.” “Similarly, here, there is no conflict based on the fact that Congress has chosen to prohibit the possession of medical marijuana, while California has chosen not to.” *Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 385, 68 Cal.Rptr.3d 656, 677 (2007), *cert. denied*, 555 U.S. 1044, 129 S. Ct. 623, 172 L. Ed. 2d 607 (2008). “We further conclude, as to the limited provisions of the MMP that Counties may challenge, those provisions do not positively conflict with the CSA, and do not pose any added obstacle to the purposes of the CSA not inherent in the distinct provisions of the exemptions from prosecution under California’s laws, and therefore those limited provisions of the MMP are not preempted.” *San Diego County v. San Diego NORML*, 165 Cal.App.4th 798, 809, 81 Cal.Rptr.3d 461, 468 (2008), *cert. denied*, 556 U.S. 1235, 129 S. Ct. 2380, 173 L. Ed. 2d 1293 (2009). “Thus, it appears Justice Scalia’s interpretation suggests a state law is preempted by a federal ‘positive conflict’ clause, like 21 U.S.C. section 903, only when the state law affirmatively requires acts violating the federal proscription.” *Id.*, 165 Cal.App.4th at 821, 81 Cal.Rptr.3d at 477.

Counties appear to argue there is a positive conflict between the identification laws and the CSA because the card issued by a county confirms that its bearer may violate or is immunized from federal laws. However, the applications for the card expressly state the card

will not insulate the bearer from federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses; instead, the card merely identifies those persons California has elected to exempt from California’s sanctions. (Cf. *U.S. v. Cannabis Cultivators Club* (N.D.Cal. 1998) 5 F.Supp.2d 1086, 1100 [California's CUA ‘does not conflict with federal law because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws’].) Because the CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA.

Id., 165 Cal.App.4th at 825-826, 81 Cal.Rptr.3d at 481.

The Medical Cannabidiol act that became effective in Iowa on July 1, 2014, does not require anyone to violate any federal law. **641 IAC 154 (2014)**. “A neurologist who has examined and treated a patient suffering from intractable epilepsy may provide, but has no duty to provide, a written recommendation for the patient’s medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy ...” **Iowa Admin. Code 641-154.2(1) (2014)**. A doctor’s “recommendation” is not a “prescription” and is protected by the First Amendment’s protection of Freedom of Speech. *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. denied*, *Walters v. Conant*, 540 U.S. 946, 124 S. Ct. 387, 157 L. Ed. 2d 276 (2003).

Our decision is consistent with principles of federalism that have left states as the primary regulators of professional conduct. See *Whalen v. Roe*, 429 U.S. 589, 603 n. 30, 51 L. Ed. 2d 64, 97 S. Ct. 869 (1977) (recognizing states’ broad police powers to regulate the administration of drugs by health professionals); *Linder v. United States*, 268 U.S. 5, 18, 69 L. Ed. 819, 45 S. Ct. 446 (1925) (“direct control of medical practice in the states is beyond the power of the federal government”). We must “show[] respect for the sovereign States that comprise our Federal Union. That respect imposes a duty on federal courts, whenever possible, to avoid or minimize conflict between federal and

state law, particularly in situations in which the citizens of a State have chosen to serve as a laboratory in the trial of novel social and economic experiments without risk to the rest of the country.”

Oakland Cannabis, 532 U.S. at 501 (Stevens, J., concurring) (internal quotation marks omitted).

Id. at 639. In Iowa, a prescription drug is defined as, “A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.” **Iowa Code § 155A.3(37)(a)**.

a. In a prosecution for the unlawful possession of marijuana under the laws of this state, including but not limited to chapters 124 and 453B, it is an affirmative and complete defense to the prosecution that the patient has been diagnosed with intractable epilepsy, used or possessed cannabidiol pursuant to a recommendation by a neurologist as authorized under this chapter, and, for a patient eighteen years of age or older, is in possession of a valid cannabidiol registration card.

b. In a prosecution for the unlawful possession of marijuana under the laws of this state, including but not limited to chapters 124 and 453B, it is an affirmative and complete defense to the prosecution that the person possessed cannabidiol because the person is a primary caregiver of a patient who has been diagnosed with intractable epilepsy and is in possession of a valid cannabidiol registration card, and where the primary caregiver’s possession of the cannabidiol is on behalf of the patient and for the patient’s use only as authorized under this chapter.

2014 Iowa Acts Chapter 1125 § 7 (May 30, 2014). Nowhere in the Iowa Medical Cannabidiol Act of 2014 does it require or authorize any violation of federal law.

5. STATE RESCHEDULING DOES NOT MAKE MARIJUANA LEGAL IN IOWA – EVEN A CORRESPONDING CHANGE IN FEDERAL SCHEDULING WOULD NOT AUTOMATICALLY MAKE IT LEGAL IN IOWA

Removing marijuana from schedule 1 in Iowa will not make it legal for a medical practitioner to prescribe it and it will not make it legal for a pharmacist to

dispense it. Take opium plants and coca plants for an example. Both of those plants are in both state and federal schedule 2, yet there is no law that makes it legal to prescribe those plants in Iowa.

Iowa law does not allow the prescription of any substance in federal schedule 1 in Iowa (with the limited exception of an FDA approved research study). Iowa law also prevents the dispensing of any substance in federal schedule 1 in Iowa (with the limited exception of an FDA approved research study). **Iowa Code §§ 124.303(1)(c), 124.303(1)(f), 124.303(3), 124.303(4), 124.304(1)(b), 124.304(1)(c), 124.307 (2014).**

In order to practice medicine in Iowa a practitioner must comply with federal law to maintain a license in Iowa. **Iowa Code §§ 148.6(b), 148.6(c), 148.6(d).**

In order to practice pharmacy in Iowa a pharmacist must comply with federal law to maintain a license in Iowa. **Iowa Code §§ 155A.15(2)(a), 155A.6(3), 155A.6A(1), 155A.6A(5), 155A.6B(1), 155A.6B(5), 155A.15(2)(a), 155A.15(2)(i), 155A.17(2), 155A.24(1)(b), 155A.26, 155A.27(1)(f), 155A.42(4); 657 IAC 10.12(1)(c), 657 IAC 10.12(4)(c), 657 IAC 10.12(4)(f).**

6. OTHER PLANTS WE USE TO MAKE MEDICINE ARE NOT IN SCHEDULE 1

Both opium plants and coca plants are in Iowa schedule 2, and neither of these two plants are approved for prescription under either state law or federal law. These two plants, opium and coca, are the source material for prescription drugs, morphine and cocaine, that are derived from the plants. Iowa now recognizes medical use of two substances made from marijuana plants, cannabidiol (marijuana extract) and dronabinol (marijuana extract). Both of these plant based extracts are in federal schedule 1, which says they have no accepted medical use in treatment in the United States, and, yet, Iowa is a state in the United States which accepts both of them for medical use. Cannabidiol is now recognized by Iowa law as a medicine. Dronabinol (naturally derived from the marijuana plant) is in state schedule 3 in Iowa, which by definition means it has accepted use for medical treatment in the United States (because Iowa is “in the United States”). **Iowa Code §§ 124.207(1)(b), 124.208(9).**

7. PRECEDENT

This board ruled unanimously in 2010 that marijuana should be transferred from state schedule 1 to state schedule 2. That ruling stands as precedent as long new information does not negate the 2010 ruling. Iowa Code 17A.19(10)(h). In order to reverse position, the board would have to explain why the evidence now shows that marijuana is correctly scheduled in Iowa. The proposed ruling from the subcommittee says the evidence that marijuana has medical use has only gotten stronger, not weaker, since 2010. Prior to 2010, the board has never take any position on whether marijuana is scheduled correctly in Iowa.

8. CONCLUSION

State administrative agencies must follow state law. State administrative agencies cannot disregard the instructions of our legislature. Our state law recognizes marijuana's medical use for both the production of dronabinol and the production of cannabidiol, which requires that marijuana be removed from state schedule 1. There is no violation of federal law by removing marijuana from state schedule 1, and, therefore, it is required by our state law unless there new evidence showing that marijuana is scheduled correctly in Iowa.

Because marijuana now has accepted medical use in treatment in thirty-four states (including Iowa), and two federal jurisdictions, DC and Guam, the board is bound by law to recognize that marijuana now has accepted medical use in treatment in the United States and must be removed from state schedule 1.

Thank you for considering my petition. If there is anything further I can assist you with in making your decision on January 5, 2015, please let me know.

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

Exhibit #24

OFFICE OF DRUG CONTROL POLICY

CORRECTION TO ERRONEOUS INTERPRETATION OF LAW)	PETITION FOR AGENCY ACTION
)	

ERRONEOUS INTERPRETATION OF LAW

On Monday, November 19, 2014, the Governor’s Office of Drug Control Policy (ODCP), through its Associate Director, Dale Woolery, submitted the following written statement into the record at a hearing before the Iowa Board of Pharmacy (IBPE) regarding my Petition to have marijuana removed from schedule 1 of the Iowa Uniform Controlled Substances Act (IUCSA)¹:

Also, down-scheduling a whole drug-type whose potency and abuse potential is rising would send a dangerous message, particularly to young Iowans that this addictive drug is somehow relatively safe. Even if unintentional, that could lead to more teen marijuana use and even greater public health and safety challenges in Iowa.

A copy of Mr. Woolery’s full remarks are attached hereto as **Exhibit #1**.

BACKGROUND

As the result of a Petition I filed with IBPE in May of 2008 to have marijuana removed from schedule 1, IBPE ruled unanimously in February of 2010 to recommend that marijuana be removed from schedule 1 and placed in schedule 2.

Prior to IBPE’s ruling in 2010, litigation in the Iowa District Court for Polk County established that the abuse potential for schedule 2 is identical to the abuse potential for schedule 1 and that IBPE made an erroneous interpretation of Iowa law when it asked for evidence from the petitioner on marijuana’s abuse potential. The question of marijuana’s potential for

¹ Iowa Code Chapter 124.

Office of Drug Control Policy, December 8, 2014

abuse is not relevant to the question of removing marijuana from schedule 1 because the abuse potential for schedule 2 is exactly the same as it is for schedule 1. A copy of Judge Novak's April 21, 2009, ruling is attached hereto as **Exhibit #2**.

The argument submitted by Mr. Woolery is an erroneous interpretation of law and is in direct conflict with the decision of the Iowa District Court in **McMahon v. Iowa Board of Pharmacy**, Polk County No. CV 7415, Ruling on Petition for Judicial Review, April 21, 2009.

ARGUMENT

The interpretation of the scheduling criteria for controlled substances is vested by law with IBPE, not with ODCP. The issue of marijuana's potential for abuse has already deemed by IBPE and the Iowa District Court not to be a factor in the limited question of whether marijuana belongs in schedule 1 or schedule 2. Down-scheduling marijuana to schedule 2 does not send a message that marijuana is relatively safe, because the relative safety of schedule 1 and schedule 2 are legally the same. Down-scheduling to schedules 3, 4, or 5, or removing marijuana entirely from all of the schedules would send a message that marijuana is relatively safe compared to substances in schedule 1 or schedule 2, but IBPE is not considering schedule 3 or lower at this time. IBPE is proposing schedule 2, as it did in 2010. A copy of IBPE's proposed ruling is attached as **Exhibit #3**. A copy of IBPE's 2020 ruling is attached as **Exhibit #4**.

At the hearing on my petition on November 21, 2014, IBPE postponed the decision on my petition until January 5, 2015. ODCP's unlawful interpretation of law is a serious injury to the administrative process being conducted by IBPE. It is imperative that ODCP correct its erroneous statement of law before IBPE reconsiders this issue on January 5, 2015. The administrative process should not be subverted by a sister executive branch agency that has no vested authority to interpret the scheduling criteria. I met with Mr. Woolery for an hour on Friday, December 5, 2014, to discuss this matter. I expect that this error will be corrected well before IBPE reconsiders this matter on January 5, 2015.

Office of Drug Control Policy, December 8, 2014

CONCLUSION

Please withdraw and/or correct the erroneous statement of law submitted by Mr. Woolery to IBPE on Monday, November 19, 2014.

Respectfully Submitted:

Carl Olsen
130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-343-9933

Exhibit #25

From: [McBride, Angela \[LEGIS\]](#)
To: "Carl Olsen"
Subject: RE: Does Iowa Code Chapter 17A include the Office of Drug Control Policy?
Date: Monday, December 22, 2014 3:07:12 PM

Mr. Olsen:

I understand your question. Sorry, I am not an attorney, and this office cannot provide legal advice. Nonetheless, I asked our legal counsel and we both agreed that it appears the ODCP only to coordinates and monitors drug information for the governor's office. With no administrative rules perhaps they do not consider themselves subject to chapter 17A but it appears the easiest thing to do is to ask them.

Sincerely,

Angie

Angela McBride
Assistant Ombudsman

Office of Ombudsman
1112 East Grand Avenue
Des Moines, IA 50319
Phone: (515) 281-3592
Toll Free: 888-426-6283
Fax: (515) 242-6007

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From: Ombudsman
Sent: Monday, December 22, 2014 8:24 AM
To: 'Carl Olsen'
Subject: RE: Does Iowa Code Chapter 17A include the Office of Drug Control Policy?

This is to acknowledge that our office received your e-mail. An Assistant Ombudsman will review your questions or concerns and will notify you of any response or action by our office. You may contact our office in the meantime if you have questions about the status or have additional information to provide us.

Please notify us of any changes in your mailing or e-mail address and telephone number.

Information about our office can be found at the following website:

<http://www.legis.iowa.gov/ombudsman/>

State of Iowa - Office of Ombudsman

Ola Babcock Miller Building, 1112 E. Grand Avenue

Des Moines, Iowa 50319 – 0231

Tel: 515-281-3592; 1-888-426-6283 (toll-free)

Fax: 515-242-6007

E-mail: ombudsman@legis.iowa.gov

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From: Carl Olsen [<mailto:carl-olsen@mchsi.com>]

Sent: Sunday, December 21, 2014 10:27 AM

To: Ombudsman

Subject: Does Iowa Code Chapter 17A include the Office of Drug Control Policy?

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654

December 21, 2014

Office of Ombudsman
Ola Babcock Miller Building
1112 East Grand
Des Moines, Iowa 50319

Dear Ombudsman,

I have filed a formal complaint with the Office of Drug Control Policy (ODCP), Pape State Office Building, 215 E. 7th St, Fifth Floor, Des Moines, Iowa 50319, Phone (515) 725-0300, Fax (515) 725-0304. This government agency is abusing its authority and I'm trying to figure out how to obtain redress. I have attached a copy of my complaint to this letter.

I am unsure about the application of the Iowa Administrative Procedures Act to ODCP and I would like to know if I have the right to file for judicial review under Iowa Code Chapter 17A.19(10).

Here is what I know about the agency:

1. ODCP is established by Iowa Code Chapter 80E.
2. ODCP has no administrative rules.
3. ODCP pre-files legislation pursuant to Iowa Code Chapter 2.16.

Iowa Code Chapter 7E deals with executive branch agencies generally, but I'm not sure it provides an answer to my question. Iowa Code Chapter 80E.1(3) states that, "The governor's office of drug control policy shall be an independent office, located at the same location as the department of public safety. Administrative support services may be provided to the governor's office of drug control policy by the department of public safety."

Iowa Code Chapter 17A.1(3) states that, "The purposes of this chapter are: . . . to increase public accountability of administrative agencies; . . . and to simplify the process of judicial review of agency action as well as increase its ease and availability."

Iowa Code Chapter 17A.2(2) states that, " 'Agency action' includes . . . statement of law or policy . . ."

Thank you!

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-
3654
515-343-9933
carl-olsen@mchsi.com

Exhibit #26

OFFICE OF DRUG CONTROL POLICY

CORRECTION TO ERRONEOUS) **PETITION FOR**
INTERPRETATION OF LAW) **RECONSIDERATION**

Mr. Lukan's response to my December 8, 2014 Petition for Agency Action, attached hereto as **Exhibit #1**, does not address the issue I raised, which is the unlawful interpretation of schedule 2 of the Iowa Uniform Controlled Substances Act by the Office of Drug Control Policy. Interpretation of the meaning of the schedules of controlled substances is clearly vested in another state administrative agency, the Iowa Board of Pharmacy, not the Office of Drug Control Policy.

An Iowa district court has specifically rejected the argument that transferring marijuana from schedule 1 to schedule 2 sends a message that marijuana is relatively safe. See *McMahon v. Iowa Board of Pharmacy*, Polk County No. CV 7415, Ruling on Petition for Judicial Review, April 21, 2009, a copy of which was attached to the Petition for Agency Action.

In avoiding this issue entirely, Mr. Lukan's response characterizes my Petition for Agency Action as a request to withdraw Mr. Woolery's entire written statement, when, in reality, my Petition for Agency Action requests only the correction of a single statement made by Mr. Woolery. Mr. Woolery's statement that down scheduling marijuana sends a message that marijuana is relatively safe is legally false. The abuse potential for schedule 1 substances and schedule 2 substances is identical, both in the language used in Iowa Code § 124.203 and Iowa Code § 124.205, and according to the court order in *McMahon v. Iowa Board of Pharmacy*.

Mr. Lukan cites three authorities, but none of those authorities has ever made a statement that transferring marijuana from schedule 1 to schedule 2 sends a message that marijuana is relatively safe.

In fact, Dr. Nora Volkow had this to say in response to this exact question from National Geographic:

Office of Drug Control Policy, December 26, 2014

<http://news.nationalgeographic.com/news/2014/03/140304-marijuana-legalized-medical-marijuana-thc-francis-collins-nora-volkow--science/>

Recently there have been calls to rethink marijuana's classification as a Schedule I drug. Is it time to consider rescheduling it?

Well, that's for another agency to decide. At NIDA, we do the research and provide the evidence that other agencies use to make their policy decisions. My view is that the cannabinoids are one of the most fascinating targets we have for the development of medicines. It's an extremely important area of research. As research starts to emerge showing the possible health benefits of specific compounds within marijuana, like 9-THC or cannabidiol, one could ask if it's appropriate. I think that ultimately the data will determine whether it should be reconsidered or not.

Dr. Volkow clearly states that her agency, the National Institute on Drug Abuse does not suggest that substances in schedule 2 are relatively safe, which is the whole point of my Petition for Agency Action. The Office of Drug Control Policy is not authorized by law to make scheduling decisions in Iowa and another agency, the Iowa Board of Pharmacy, is clearly vested with that authority.

To be absolutely clear, the Office of Drug Control Policy can oppose transferring marijuana from schedule 1 to schedule 2, if it has a valid reasons for doing so. But, lying about schedule 2, saying that schedule 2 sends a message that schedule 2 substances are relatively safe, in the face of a court order rejecting that exact argument is unethical and is prohibited by law. Please correct this error immediately.

Respectfully Submitted:

Carl Olsen
130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-343-9933



STATE OF IOWA

TERRY E. BRANSTAD
GOVERNOR
KIM REYNOLDS
LT. GOVERNOR

OFFICE OF DRUG CONTROL POLICY
STEVEN F. LUKAN, DIRECTOR

December 17, 2014

Carl Olsen
130 East Aurora Avenue
Des Moines, Iowa 50313-3654

Dear Mr. Olsen:

Thank you for your recent correspondence. I am in receipt of your December 8, 2014 Petition for Agency Action, regarding comments made by Dale Woolery, at the invitation of the Iowa Pharmacy Board, to a board committee.

After reviewing your submission, I find no grounds for corrective action.

The comments submitted by Mr. Woolery are consistent with research-based findings by nationally renowned professionals in the field of substance abuse. These include: Dr. Nora Volkow, Director of the National Institutes of Health's National Institute on Drug Abuse; Dr. Lloyd Johnston, principal investigator of the University of Michigan's Monitoring the Future study; and Michael Botticelli, Acting Director of the White House Office of National Drug Control Policy.

I appreciate your feedback. If you have concerns about my response to you in this matter, please feel free to contact the Governor's Office at 515-281-5111.

Sincerely,

Steven F. Lukan
Director

Exhibit #27

From: [Lloyd Johnston](#)
To: [Carl Olsen](#)
Subject: Re: Marijuana scheduling
Date: Friday, December 26, 2014 11:41:20 AM

Dear Mr. Olsen

Thank you for your email. I am glad to comment on the position I am said to have taken on the scheduling of marijuana.

I don't believe that I have ever commented on the subject of scheduling of marijuana. I have said that I thought that the legalization of marijuana for medical use in many states likely has contributed to the ongoing decline in perceived risk for marijuana among the country's teenagers, and that perceived risk has been a strong driver of actual use by teens. I stand by that statement.

I hope that this is helpful.

Best regards,

Lloyd Johnston

--
Lloyd D. Johnston, PhD
Angus Campbell Collegiate Research Professor
University Distinguished Senior Research Scientist
Principal Investigator
Monitoring the Future (MTF)
Youth, Education, and Society (YES)
Institute for Social Research
The University of Michigan
Ann Arbor, MI 48106-1248
[\(734\) 763-5043](tel:(734)763-5043)
lloydj@umich.edu

monitoringthefuture.org
yesresearch.org
bridgingthegapresearch.org

On Fri, Dec 26, 2014 at 11:31 AM, Carl Olsen <carl-olsen@mchsi.com> wrote:

Dear Dr. Johnston,

I have a petition pending with the Iowa Board of Pharmacy on the classification of marijuana as a schedule 1 controlled substance in Iowa. A subcommittee hearing was held on November 17, 2014, and on November 19, 2014, the subcommittee reported favorably

on my petition to have marijuana removed from schedule 1. You can read the subcommittee report here:

http://files.iowamedicalmarijuana.org/imm/documents/2015_proposed_recommendation.pdf

The Iowa Office of Drug Control Policy claims that you are opposed to removing marijuana from schedule 1. It would be useful to have a statement directly from you saying whether you take any position one way or the other on the Iowa Board of Pharmacy's subcommittee report of November 19, 2014.

Can you provide me with such a statement?

Thank you!

Carl Olsen

130 E. Aurora Ave.

Des Moines, Iowa 50313-3654

[515-343-9933](tel:515-343-9933)

carl-olsen@mchsi.com

Exhibit #28

From: [Jessen, Lloyd \[IBPE\]](mailto:Jessen, Lloyd [IBPE])
To: carl-olsen@mchsi.com
Cc: [Jorgenson, Debbie \[IBPE\]](mailto:Jorgenson, Debbie [IBPE]); [Witkowski, Terry \[IBPE\]](mailto:Witkowski, Terry [IBPE]); [Gavin, Meghan \[AG\]](mailto:Gavin, Meghan [AG])
Subject: RE: Motion to Table
Date: Monday, December 29, 2014 3:07:32 PM

Hi Carl,

The marijuana issue will be the first thing on our open session agenda, beginning at **1:00 p.m. on Monday, January 5**. It is my understanding that a final decision will be made on the matter at that time.

Thanks,
Lloyd

Lloyd K. Jessen, R.Ph., J.D.
Executive Director
Iowa Board of Pharmacy
515.281.8630 Direct Line
lloyd.jessen@iowa.gov

From: carl-olsen@mchsi.com [mailto:carl-olsen@mchsi.com]
Sent: Monday, December 29, 2014 11:10 AM
To: Jessen, Lloyd [IBPE]
Cc: Jorgenson, Debbie [IBPE]; Witkowski, Terry [IBPE]
Subject: Motion to Table

Hi Lloyd,

I don't have a copy of the motion that was made to table consideration of the subcommittee's report on my petition. I think it was a motion to table until a time certain (the next meeting in January), but I'm not sure a motion to table has any time limits. I'm trying to figure out how much time I will need to take as vacation from work. I blocked out all three days, January 5-7, 2015, for now.

Does the motion to table automatically come back before the board without a motion to take it off the table?

Also, since this is a proposed ruling on my petition, it seems like something has to be considered just to complete that process.

Can you explain to me what the motion to table means as far as when this might come up at the next meeting?

Will you schedule a specific time for it?

Thank you!

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933

carl-olsen@mchsi.com

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Exhibit #29

From: [Carl Olsen](#)
To: [Jessen, Lloyd \[IBPE\]](#); [Debbie Jorgenson](#); [Witkowski, Terry \[IBPE\]](#)
Subject: Congress just recognized medical use of marijuana in Iowa
Date: Thursday, January 1, 2015 7:14:08 PM

Hi Lloyd,

I'd like to add this to the record in my petition for marijuana rescheduling:

Congress passed their annual appropriations bill for fiscal year 2015, entitled the Consolidated and Further Continuing Appropriations Act, 2015 (H.R. 83, Congressional Session 2014-2015), signed into law by the President on December 16, 2014.57 Section 538 of this new law declares:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

This statute expressly recognizes the existence of marijuana as medicine. Of great significance is the fact that the statute uses the words "medical marijuana," without caveat or limitation.

--

Carl Olsen

130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-343-9933
carl@carl-olsen.com

Exhibit #30

SENATE/HOUSE FILE _____
BY (PROPOSED BOARD OF PHARMACY
BILL)

A BILL FOR

1 An Act making changes to the controlled substance schedules,
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. _____ H.F. _____

1 Section 1. Section 124.204, subsection 4, Code 2015, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. *al.* 4-methyl-N-ethylcathinone. Other names:
4 4-MEC, 2-(ethylamino)-1-(4-methylphenyl)propan-1-one.

5 NEW PARAGRAPH. *am.* 4-methyl-alpha-
6 pyrrolidinopropiophenone. Other names: 4-MePPP,
7 MePPP, 4-methyl-[alpha]-pyrrolidinopropiophenone,
8 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one.

9 NEW PARAGRAPH. *an.* Alpha-pyrrolidinopentiophenone.
10 Other names: [alpha]-PVP, [alpha]-pyrrolidinovalerophenone,
11 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one.

12 NEW PARAGRAPH. *ao.* Butylone. Other names: bk-MBDB,
13 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one.

14 NEW PARAGRAPH. *ap.* Pentedrone. Other
15 names: [alpha]-methylaminovalerophenone,
16 2-(methylamino)-1-phenylpentan-1-one.

17 NEW PARAGRAPH. *aq.* Pentylone. Other names: bk-MBDP,
18 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one.

19 NEW PARAGRAPH. *ar.* 4-fluoro-N-methylcathinone.
20 Other names: 4-FMC, flephedrone,
21 1-(4-fluorophenyl)-2-(methylamino)propan-1-one.

22 NEW PARAGRAPH. *as.* 3-fluoro-N-methylcathinone. Other
23 names: 3-FMC, 1-(3-fluorophenyl)-2-(methylamino)propan-1-one.

24 NEW PARAGRAPH. *at.* Naphyrone. Other names:
25 naphthylpyrovalerone, 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)
26 pentan-1-one.

27 NEW PARAGRAPH. *au.* Alpha-pyrrolidinobutiophenone. Other
28 names: [alpha]-PBP, 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one.

29 Sec. 2. Section 124.204, subsection 9, Code 2015, is amended
30 by adding the following new paragraphs:

31 NEW PARAGRAPH. *g.* Quinolin-8-yl 1-pentyl-1H-indole-
32 3-carboxylate. Other names: PB-22, QUPIC.

33 NEW PARAGRAPH. *h.* Quinolin-8-yl 1-(5-fluoropentyl)-1H-
34 indole-3-carboxylate. Other names: 5-fluoro-PB-22, 5F-PB-22.

35 NEW PARAGRAPH. *i.* N-(1-amino-3-methyl-1-oxobutan-2-yl)-

S.F. _____ H.F. _____

1 1-(4-fluorobenzyl)-1H-indazole-3-carboxamide. Other name:
2 AB-FUBINACA.

3 NEW PARAGRAPH. *j.* N-(1-amino-3,3-dimethyl-1-oxobutan-
4 2-yl)-1-pentyl-1H-indazole-3-carboxamide. Other name:
5 ADB-PINACA.

6 Sec. 3. Section 124.208, subsection 5, paragraph a,
7 subparagraphs (3) and (4), Code 2015, are amended by striking
8 the subparagraphs.

9 Sec. 4. Section 124.210, subsection 2, Code 2015, is amended
10 by adding the following new paragraph:

11 NEW PARAGRAPH. *c.* 2-[(dimethylamino)methyl]-1-
12 (3-methoxyphenyl)cyclohexanol, its salts, optical and geometric
13 isomers, and salts of these isomers (including tramadol).

14 Sec. 5. Section 124.210, subsection 3, Code 2015, is amended
15 by adding the following new paragraphs:

16 NEW PARAGRAPH. *bb.* Alfaxalone.

17 NEW PARAGRAPH. *bc.* Suvorexant.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill modifies the controlled substance schedules, and
22 provides penalties.

23 The bill adds 10 synthetic cathinones and four synthetic
24 cannabinoids to the list of substances classified as schedule I
25 controlled substances. The board of pharmacy has determined
26 that these substances should be classified as schedule I
27 controlled substances because each substance has a high
28 potential for abuse and no accepted medical use in the United
29 States.

30 The bill removes hydrocodone-combination products from
31 the list of substances classified as schedule III controlled
32 substances. Hydrocodone, as a single-entity substance,
33 is currently classified as a schedule II controlled
34 substance. The change under the bill effectively makes all
35 hydrocodone-containing products subject to the controls,

S.F. _____ H.F. _____

1 security, reporting, and penalty provisions for schedule II
2 controlled substances.

3 The bill also classifies the substance commonly known as
4 tramadol, a centrally acting opioid analgesic, as a schedule
5 IV controlled substance. This substance was previously
6 marketed and distributed as a noncontrolled prescription
7 drug. Effective August 18, 2014, the federal Drug Enforcement
8 Administration classified tramadol as a schedule IV controlled
9 substance under federal law.

10 The bill also classifies alfaxalone, a neurosteroid with
11 central nervous system depressant properties, as a schedule IV
12 controlled substance. The federal Food and Drug Administration
13 recently approved this intravenous injectable anesthetic for
14 use by or on the order of a licensed veterinarian. Alfaxalone
15 is not available by prescription and is approved for use in
16 veterinary practice.

17 The bill classifies suvorexant, a new insomnia treatment
18 approved by the federal Food and Drug Administration,
19 as a schedule IV controlled substance. This is a novel,
20 first-in-class chemical substance and information on actual
21 abuse data is not available. However, data from clinical
22 studies supports the classification in schedule IV.

23 It is a class "C" felony pursuant to Code section
24 124.401(1)(c)(8) for any unauthorized person to violate a
25 provision of Code section 124.401 involving a classified
26 substance placed on schedule I, II, or III pursuant to the
27 bill. A class "C" felony for this particular offense is
28 punishable by confinement for no more than 10 years and a fine
29 of at least \$1,000 but not more than \$50,000.

30 It is an aggravated misdemeanor pursuant to Code section
31 124.401(1)(d) for any unauthorized person to violate a
32 provision of Code section 124.401 involving a classified
33 substance placed on schedule IV pursuant to the bill. An
34 aggravated misdemeanor is punishable by confinement for no more
35 than two years and a fine of at least \$625 but not more than

S.F. _____ H.F. _____

1 \$6,250.

2 If a person possesses a controlled substance in violation of
3 Code section 124.401(5) as a first offense, the person commits
4 a serious misdemeanor. A serious misdemeanor is punishable by
5 confinement for no more than one year and a fine of at least
6 \$315 but not more than \$1,875.

Exhibit #31

EDWARD MAIER: We're ready to proceed and my understanding is that we are at 2.1 on our agenda, the petition to request reclassification of marijuana. And, what we've heard on that is that we have some suggestions from the last time around from the subcommittee. And, we voted to table it. And, so I'm going to open it up here to the board for some discussion at this point and see where we want to go from here on that topic.

JAMES MILLER: Well, I think we should limit our discussion to the cannabidiol that was acted on by the Iowa legislature. The Iowa legislature did not, certainly had discussions about reclassifying marijuana, and they did not take any action on that. I think their purview demands that they would, but they did take action as far as addressing cannabidiol. And, so I think we can, we could uphold the act. But as far as the rest of the 400 components of the marijuana plant that are listed, I don't think we have any purview there.

SUSAN FREY: I guess I would agree with that, simply because as a board our procedure has always been in the past that we name the specific compound or chemical entity. For instance, we don't just recommend that we reschedule all pain killers, because there's different levels, they are used for different things. And, so, I would, I think that's probably been our biggest stumbling block, is just by saying marijuana it's not specific enough. So, I would simply, we already have legislation that has addressed the cannabidiol oil, and that we recommend reclassification of that product. And, as scientific and medical information comes along for other derivatives, since we already have Marinol that is scheduled, that's a marijuana derivative or THC product, a chemical entity of marijuana, it's already scheduled. I think we should address each individual chemical as they become, or entity as they become available. So, that would be, I would second Jim's recommendation that we address simply the cannabidiol oil to bring us in compliance with the legislation.

MEGHAN GAVIN: Can I interject one second?

SUSAN FREY: Sure.

MEGHAN GAVIN: The board is certainly able to make your recommendation as narrow as you want. The actual petition, however, itself is for the reclassification of marijuana. So, if you're going to go down the route as has been suggested, you

would deny that recommendation in total and make your more specific recommendation. That would be the procedure.

SUSAN FREY: Okay.

JAMES MILLER: I would move that we ...

EDWARD MAIER: Just a second. I think that we need to have a little more discussion from the members of the committee who made the recommendation. I'd like to hear if they have any input on what's just been said.

SHARON MEYER: Well, I think as a pharmacist we all have that scientific viewpoint that if a particular chemical or compound that has some medical effect, it would need to be studied and researched and standardized. And, that's what we prefer for dosage forms for patients. As a member of the subcommittee I think what we wrestled with is what is currently in the code that has language to the effect that if a substance is currently in schedule 1 is found to have some medical benefit then perhaps it should be considered schedule 2. I think that's kind of where we as a subcommittee were going is because we were following what's in the Iowa Code now to make recommendations.

LADONNA GRATIAS: And, also the legislature did pass medical marijuana. It was told to us that it really was a schedule ...

EDWARD MAIER: That was cannabidiol oil.

JAMES MILLER: Just one component.

LADONNA GRATIAS: Right.

SUSAN FREY: Well, I guess ...

JAMES MILLER: I would say, there's a product being tested in the US and UK, it's being tested in human subjects in a product that has both THC and cannabidiol. It's been in clinical trials. So there are some standardized products being developed. But to consider the whole marijuana plant I think is way beyond the scope of what ...

SUSAN FREY: I guess I'm, in retrospect, it makes sense to me that if you can use the analogy of opium, opium is in schedule 1. So, it's a raw plant. And, so it has medicinal value. It's in schedule 1. But, yet, we have morphine, which is in schedule 2, which is a direct derivative of that plant. To me, that's where this should fit. We should keep marijuana in schedule 1, but then the chemical entities that developed from that should go into schedule 2.

EDWARD MAIER: Okay, I guess I agree with Sharon from the perspective of the group. That is what we struggled with. But we also struggled with the fact that I don't think any of us were completely ready to say we want to jump both feet in and say that we think there should be a medical marijuana program in this state. That's not, at least from my personal perspective, and I think I recall a conversation that was a part of it, because it is such a broad thing. And, there is such a variance in potencies of the plant. It's a very hard thing to get your hand on scientifically. We've heard some people say there's some uses for derivatives, but, you know, at this point and time we're still, we need more research. But schedule 1 and schedule 2 both allow research. One point that I really am, because I'm really, I'm really strong on, because I've been here for the last six years and we've struggled with this, there are conflicting citations in the code. One place it says its schedule 1 except by rules of the board and one place it says its schedule 2 except by the board. I strongly believe that we need to recommend, or that we need to do something legislatively to clear that mess up, whichever way we go.

JAMES MILLER: There's a petition to your point and I think the petition itself talks about two places in the Iowa Code. You know, we have a legislature that is charged with writing the code in particular. I don't think they need any recommendation from us. We're not attorneys. We're here to take care of the pharmacy laws and protect the health of our citizens. So, I think that kind of stuff is way beyond our area of expertise. I don't think we have any business telling them what to do.

EDWARD MAIER: I agree with the part about the fact, probably I feel more comfortable with making a recommendation of cannabidiol than I do on marijuana. Personally, if somebody's willing to make that recommendation, then I'm willing to go ... I don't think we can just deny this request and move away because the legislature's already said that there is some use for cannabidiol. If we're allowed to turn around then and make a recommendation for cannabidiol, I'm willing to say

we deny the marijuana part of it and we just include the cannabidiol and recommend that the change be made to delete those references to the rules of the board.

MEGHAN GAVIN: Well, your proposal then would be to make clear that the legislature would have to act before marijuana would be rescheduled, then the board would not be committed to establish a marijuana program.

EDWARD MAIER: That's what I'm thinkin'. Our idea is that we don't have the power to establish a marijuana program. We can't write those rules because they're too broad. But, yet, there's a suggestion there that we should, and that's not right. That's the legislature's prerogative, not our prerogative. And, those things need to be out of the code.

SUSAN FREY: I agree that if we deny the petition, that we should turn around and do a recommendation for the cannabidiol oil. But, then, perhaps we should move the other part of that as a piece of legislation to be entered in and not part of a suggestion.

EDWARD MAIER: And I'm perfectly agreeable to that. I was thinking to make that change as a part of the whole thing. It's going to keep coming back to us as rule making and those are those outdated wording that has been there for years. That kind of a program is way too broad for one board. It would be way too broad for the board of medicine, or the board of nursing, or anybody else to write those kinds of rules. So, I guess I would entertain ... Is there any other discussion? Okay, I would entertain a motion from anybody.

EDWARD MCKENNA: I think we already have a motion.

EDWARD MAIER: Just a second now, we have a comment.

CARL OLSEN: Opium plants are in schedule 2, not schedule 1. And coca plants are in schedule 2, not schedule 1. We don't have any plants in schedule 1 from which any medicines are derived. So, that was an incorrect statement. If you want to normalize the act, you recommend marijuana be classified like opium poppies and coca plant because that's where we put plants that are the source material for these derivatives like cannabidiol.

JAMES MILLER: Duly noted. I'll make a recommendation that we deny the request.

SUSAN FREY: And I will second it.

EDWARD MAIER: Any further discussion? All those in favor, aye.

ALL BOARD MEMBERS: Aye.

EDWARD MAIER: Opposed? Okay, the motion has been denied. Does anyone have any further recommendation they would like to ...

SUSAN FREY: I move that we recommend to the legislature to reschedule cannabidiol oil to schedule 2.

MAIER: Second. Any further discussion?

EDWARD MCKENNA: The only discussion I have on it is, how broad is that? In other words, if you have morphine scheduled like 15 mg, 30 mg, different things like that? How do we know if there's other ingredients in that oil? What are we recommending? In other words, there are certain companies out there that make that. Are they legitimate companies?

EDWARD MAIER: And, that's already been said. I think at this point the legislature has recognized the medical use for it and that is our criteria.

EDWARD MCKENNA: Right.

EDWARD MAIER: But, duly noted that there are concerns, a major concern.

JAMES MILLER: Another major concern, according to DEA it's schedule 1. So, every pharmacy in the state has to have a DEA license and you have to abide by that license. So we would all be breaking the law if we had a cannabidiol product. Its consistent with the legislative act, but nothing else.

MEGHAN GAVIN: I think, I want to say this accurately, the classification of cannabidiol under federal law is a little bit of a gray area at the moment and time.

Some people believe it to be part of schedule 1 as marijuana and some people believe it to be unscheduled. There's no definitive statement. And, to my knowledge I don't believe DEA has taken a position publicly on it.

EDWARD MAIER: Carl, do you want to ...

CARL OLSEN: The DEA website clearly classifies cannabidiol as schedule 1.

EDWARD MAIER: So, if we were to go to schedule 2, we would still be ...

CARL OLSEN: It has a drug control number, 73 something.

JAMES MILLER: But the derivative product being approved, you know, in the approval process, includes the cannabidiol that is in the act.

SHARON MEYER: Just for the sake of discussion, is something that is needed possibly something the legislature needs to address with that? That a substance, cannabidiol is included in this to the legislature? That is is a schedule 1 substance? Is that something that really the legislature needs to address, that there is conflicts in the code? So, I don't know if we're recommending that it should go to schedule 2 or that the legislature needs to address that there's a conflict.

EDWARD MAIER: Your motion, Jim.

SUSAN FREY: It was my motion.

SHARON MEYER: We were also trying to think of other potential derivatives that may come on the scene, that there are active uses for. And, we were going to the conundrum of the scheduling of schedule 1 / schedule 2, the other derivatives, the federal, the state. So, I feel its like as a member of the subcommittee, that's where we had a tough job because there is conflicting code.

EDWARD MAIER: The code says cannabidiol. So, if we change cannabidiol, we're following what the legislature did. The subcommittee had already recommended schedule 2 anyway.

JAMES MILLER: It's totally correct. There's no product. There's conflicting code. I think the only thing we're doing with this recommendation is supporting the cannabidiol legislation that this particular product has some use, possible use in cases of epilepsy.

SUSAN FREY: So, are you offering a friendly amendment?

EDWARD MAIER: No, I just wanted to clarify because of the question she brought up. This is a change.

SUSAN FREY: That's where I want to see this going. If the existing program, whichever is being developed, we don't know what that is, the department of public health, whether that's going to involve, what distribution system, we don't know. So, I guess, putting it in schedule 2 makes it more readily available if that comes to, once those plans and design is available.

EDWARD MAIER: Any other discussion? We have a motion to reschedule cannabidiol to schedule 2. All those in favor, aye.

ALL BOARD MEMBERS: Aye.

EDWARD MAIER: Opposed? Okay, the motion is carried. And I would commend the subcommittee. And I, when we get to the legislation, we need to talk about what we said. The other thing is that's going to get lost in this is that we really felt now, twice, bodies of the board have said something about there being a committee of a cross section of people from multiple disciplines that take a look at either cannabidiol oil or marijuana or whatever it is. And, I hope that this doesn't just get lost in the record that somewhere a committee forms and takes it seriously. With that, we're going to move on.

TERRY WITKOWSKI: Question. Do you want to go ...? Do you want to have a recommendation that the legislature look at the current language that talks about the board of pharmacy adopting rules for medical? Because neither of these motions really address any kind of a recommendation to them regarding that.

EDWARD MAIER: Susan was talking about that. We look at that as a piece of legislation that goes up. Or would that have to be a recommendation?

TERRY WITKOWSKI: If you want to propose any legislation now, you'd have to get a legislator to do it because we're beyond the deadline for pre-filing.

SUSAN FREY: Okay.

EDWARD MAIER: I'd like to see a recommendation.

SUSAN FREY: And, refresh my memory, Terry. What is it that we need to review, or to remove from ...?

TERRY WITKOWSKI: There is a provision in schedule 1 that makes an exception or an exemption for marijuana when pursuant to rules of the board for medical marijuana program. There's a provision in schedule 2 that, along that same line, that says that marijuana is a schedule 2 substance pursuant to rules of the board. So, it makes an exemption out of schedule 1 and an exception into schedule 2, both of them pursuant to rules of the board for a medical marijuana program. So, your recommendation could simply be to eliminate those two provisions.

EDWARD MAIER: And the reason being that our authority is too narrow to adopt the rules.

MEGHAN GAVIN: You could just remove "pursuant to rules of the board." That's all you have to say.

EDWARD MAIER: In both places. Would you like to make a motion to make that recommendation?

SUSAN FREY: Okay, here goes. I move that we send a recommendation to the legislature to remove in schedule 1 concerning marijuana the exemption ... No, I mean in schedule 1, giving the exemption for a medical marijuana program, I suggest we remove the wording "pursuant to rules of the board of pharmacy," or, "the board." Okay, because the board does not have the authority to establish a program. And, I further recommend that the exception of a medical marijuana program that we remove the wordage "pursuant to rules of the board" for that same reason, that the board does not have authority to publicate those rules.

EDWARD MAIER: Do we have a second?

JAMES MILLER: Second.

EDWARD MAIER: Discussion? All those in favor, aye.

ALL BOARD MEMBERS: Aye.

EDWARD MAIER: Opposed? Carried.

Exhibit #32

Iowa Board of Pharmacy, January 12, 2015

IOWA BOARD OF PHARMACY

MARIJUANA SCHEDULING

)
)

**PETITION FOR
RECONSIDERATION**

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

Iowa Board of Pharmacy, January 12, 2015

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.

Iowa Board of Pharmacy, January 12, 2015

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.

Iowa Board of Pharmacy, January 12, 2015

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:

Carl Olsen
130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-343-9933

Exhibit #33

From: [Jessen, Lloyd \[IBPE\]](mailto:Jessen_Lloyd@IBPE)
To: carl.olsen@mchsi.com
Cc: [Rita Bettis](mailto:Rita.Bettis@carl.jorgenson.Debbie@IBPE); [carl.jorgenson.Debbie \[IBPE\]](mailto:carl.jorgenson.Debbie@IBPE)
Subject: RE: Documents for Monday, March 9, 2015
Date: Monday, March 2, 2015 10:15:56 AM

Carl,
We will go ahead and add all of your items to the Board meeting materials for March 9.
Lloyd

Lloyd K. Jessen, R.Ph., J.D.
Executive Director
Iowa Board of Pharmacy
515.281.8630 Direct Line
lloyd.jessen@iowa.gov

From: carl.olsen@mchsi.com [mailto:carl.olsen@mchsi.com]
Sent: Monday, March 02, 2015 10:02 AM
To: [Jessen, Lloyd \[IBPE\]](mailto:Jessen, Lloyd [IBPE])
Cc: [Rita Bettis](mailto:Rita.Bettis@carl.jorgenson.Debbie@IBPE); [carl.jorgenson.Debbie \[IBPE\]](mailto:carl.jorgenson.Debbie@IBPE)
Subject: Re: Documents for Monday, March 9, 2015

Lloyd,
It is my understanding that I have already submitted those first two items and I do not have to submit them again.
Is that correct?

Carl

----- Original Message -----
From: "Lloyd Jessen [IBPE]" <Lloyd.Jessen@iowa.gov>
To: carl.olsen@mchsi.com
Cc: "Rita Bettis" <rita.bettis@aclu-ia.org>, "carl" <carl@carl-olsen.com>, "Debbie Jorgenson [IBPE]" <Debbie.Jorgenson@iowa.gov>
Sent: Monday, March 2, 2015 9:57:42 AM GMT -06:00 US/Canada Central
Subject: RE: Documents for Monday, March 9, 2015

Carl,
We have passed our deadline for distributing materials to the Board members. You will need to bring seven (7) copies of your documents to the meeting for the seven board members.
Thanks!
Lloyd

Lloyd K. Jessen, R.Ph., J.D.
Executive Director
Iowa Board of Pharmacy
515.281.8630 Direct Line
lloyd.jessen@iowa.gov

From: carl.olsen@mchsi.com [mailto:carl.olsen@mchsi.com]
Sent: Monday, March 02, 2015 9:55 AM
To: [Jessen, Lloyd \[IBPE\]](mailto:Jessen, Lloyd [IBPE])
Cc: [Rita Bettis](mailto:Rita.Bettis@carl.jorgenson.Debbie@IBPE); [carl.jorgenson.Debbie \[IBPE\]](mailto:carl.jorgenson.Debbie@IBPE)
Subject: Documents for Monday, March 9, 2015

Hi Lloyd,

Here is a list of five documents I would like to have included in my petition for reconsideration of the board's January 5, 2015, ruling on my petition:

1. Position statement of the American Academy of Neurology, December 17, 2014.
https://www.aan.com/uploadedFiles/Website_Library_Assets/Documents/6.Public_Policy/1.Stay_Informed/2.Position_Statements/3.PDFs_of_all_Position_Statements/Final%20Medical%20Marijuana%20Position%20Statement.pdf
2. Position statement of the American Academy of Pediatrics, January 20, 2015.
<http://pediatrics.aappublications.org/content/early/2015/01/20/peds.2014-4146.full.pdf+html>
3. SSB 1005
<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=SSB1005>
4. SSB 1205
<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&ga=86&hbill=SSB1205>
5. SF 282
<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&ga=86&hbill=SF282>

There may be one more bill filed tomorrow by Senator Bolkom that I will want to have included in this list, so I'll add that when I have the bill number.

The issue I want to address is that the reasoning the board gave on January 5, 2015, during discussion of my petition, is that marijuana should be in the same schedule as opium plants. Opium plants are in schedule 2, but the board said opium plants are in schedule 1.

Also, SSB 1005, SSB 1205, and SF 282, all seem to suggest that marijuana plants could be prescribed. I suppose that is correct in theory, but opium plants are not prescribed. I think everyone is confused.

The position statements of the American Academy of Neurology and the American Academy of Pediatrics make it crystal clear that we are not moving marijuana to schedule 2 so it can be prescribed for anything. Schedule 1 just makes it impossible to do the level of research we need to be doing now that millions of Americans are using marijuana and marijuana products completely unregulated by the FDA.

I don't think the Legislative Services Agency does an adequate job explaining this, and I feel it's the duty of the board to explain this to our legislators.

I would also like to note that this is the first year that the Office of Drug Control Policy has not filed opposing legislation to rescheduling.

Thank you!

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933

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From: [Jessen, Lloyd \[IBPE\]](#)
To: carl-olsen@mchsi.com
Subject: FW: Carl's March BB Materials
Date: Monday, March 2, 2015 10:18:24 AM
Attachments: [March marijuana request.pdf](#)

Carl,
Attached is what we already had from you.
We will add your new items.
Thanks,
Lloyd

Lloyd K. Jessen, R.Ph., J.D.
Executive Director
Iowa Board of Pharmacy
515.281.8630 Direct Line
lloyd.jessen@iowa.gov

From: Jorgenson, Debbie [IBPE]
Sent: Monday, March 02, 2015 10:14 AM
To: Jessen, Lloyd [IBPE]
Subject: Carl's March BB Materials

Here is what is on BB for March.

This email message and its attachments may contain confidential information that is exempt from disclosure under Iowa Code chapters 22, 139A, and other applicable law. Confidential information is for the sole use of the intended recipient. If you believe that you have received this transmission in error, please reply to the sender, and then delete all copies of this message and any attachments. If you are not the intended recipient, you are hereby notified that any review, use, retention, dissemination, distribution, or copying of this message is strictly prohibited by law.

Iowa Board of Pharmacy, January 12, 2015

IOWA BOARD OF PHARMACY

MARIJUANA SCHEDULING)	PETITION FOR
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<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

Iowa Board of Pharmacy, January 12, 2015

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.

Page 2 of 4

Iowa Board of Pharmacy, January 12, 2015

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.

Page 3 of 4

Iowa Board of Pharmacy, January 12, 2015

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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Page 4 of 4

From: carl-olsen@mchsi.com
To: [Jessen, Lloyd \[IBPE\]](#)
Cc: [Jorgenson, Debbie \[IBPE\]](#); [Witkowski, Terry \[IBPE\]](#); [Gavin, Meghan \[AG\]](#)
Subject: Please add this from the American Academy of Pediatrics
Date: Monday, January 26, 2015 10:09:07 AM
Attachments: [Pediatrics-2015--peds.2014-4146.pdf](#)

Please include this in the evidence for my petition for reconsideration of the January 5, 2015, ruling denying my petition requesting the board to recommend the rescheduling of marijuana from schedule 1 to some other schedule (or, none at all, whatever is appropriate).

Position Statement 5 on page 3:

The AAP strongly supports research and development of pharmaceutical cannabinoids and supports a review of policies promoting research on the medical use of these compounds. The AAP recommends changing marijuana from a Drug Enforcement Administration schedule I to a schedule II drug to facilitate this research.

See the attached full report.

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POLICY STATEMENT Organizational Principles to Guide and Define the Child Health Care System and/or Improve the Health of all Children

American Academy
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update

COMMITTEE ON SUBSTANCE ABUSE and COMMITTEE ON ADOLESCENCE

This policy statement is an update of the American Academy of Pediatrics policy statement “Legalization of Marijuana: Potential Impact on Youth,” published in 2004. Pediatricians have special expertise in the care of children and adolescents and may be called on to advise legislators about the potential impact of changes in the legal status of marijuana on adolescents. Parents also may look to pediatricians for advice as they consider whether to support state-level initiatives that propose to legalize the use of marijuana for medical and nonmedical purposes or to decriminalize the possession of small amounts of marijuana. This policy statement provides the position of the American Academy of Pediatrics on the issue of marijuana legalization. The accompanying technical report reviews what is currently known about the relationships of marijuana use with health and the developing brain and the legal status of marijuana and adolescents’ use of marijuana to better understand how change in legal status might influence the degree of marijuana use by adolescents in the future.

abstract

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DEFINITIONS

For the purpose of clarifying terminology, the following are definitions used in this policy statement and the accompanying technical report¹:

Legalization

Allowing cultivation, sale, and use of cannabis (restricted to adults ≥21 years of age).

Legalization of Medical Marijuana

Allowing the use of marijuana to treat a medical condition or symptom with a recommendation from a physician.

Decriminalization

Reducing penalties for cannabis-related offenses to lesser criminal charges or to civil penalties.

INTRODUCTION

Marijuana is the most commonly used illicit substance among adolescents.² Recreational sale and possession of marijuana by adults remain illegal in most states and remain illegal under federal law. However, a number of states and local jurisdictions have decriminalized the possession of marijuana for recreational use by adults, reducing penalties to misdemeanors or citations. Many states also have legalized medical marijuana for adults who receive recommendations for use by physicians. Almost all states with medical marijuana laws allow access by minors, though often with greater regulation. States in which marijuana is legal prohibit marijuana sales to and use by minors, but changes in the legal status of marijuana, even if limited to adults, may affect the prevalence of use among adolescents. Although the epidemiologic data are not consistent across states and time periods, with the exception of Michigan and New Mexico, in all states where medical marijuana has been legalized, marijuana use by minors has been stable or has decreased.³ Youth substance use rates depend on a number of factors, including legal status, availability and ease of access of the substance, and perception of harm. For example, although tobacco is easily accessible, youth tobacco use rates have decreased substantially since the 1990s, in conjunction with aggressive public health campaigns warning of the medical consequences of smoking. In Colorado, the passage of the amendment to legalize recreational marijuana occurred in November 2012. Although sales of recreational

marijuana did not start in Colorado until January 1, 2014, the postlegalization 2013 rates of youth use increased.⁴ It is possible that public health campaigns that effectively communicate the harms associated with teen marijuana use could reduce youth use despite legalization. Legalization campaigns that imply that marijuana is a benign substance present a significant challenge for educating the public about its known risks and adverse effects. Therefore, it is unclear what the impact of legalization of marijuana for adults will have on the prevalence of marijuana use by adolescents, especially if the implementation of legalization includes messaging that minimizes the health and behavioral risks.

Substance abuse by adolescents is an ongoing health concern. Marijuana remains classified in the Controlled Substances Act (21 USC §801-971 [2012]) as a schedule I drug. This classification implies that it has a high potential for abuse, has no currently accepted medical use in the United States, and lacks accepted safety for use under supervision by a physician. Despite this classification by the federal government, marijuana has been legalized for medical purposes in a number of states, in direct opposition to federal law. Since the first policy statement from the American Academy of Pediatrics (AAP) on the legalization of marijuana was published in 2004, limited research has been performed to examine the potential therapeutic effects of marijuana for adults, specifically the class of chemicals known as cannabinoids, which are responsible for most of the medicinal effects of marijuana. This research has demonstrated that both the drugs approved by the US Food and Drug Administration and other pharmaceutical cannabinoids, such as cannabidiol, can be helpful for adults with specific conditions, such as increasing appetite and

decreasing nausea and vomiting in patients with cancer and for chronic pain syndromes,^{5,6} although side effects of dizziness and dysphoria may also be experienced. There are no published studies on the use of medicinal marijuana or pharmaceutical cannabinoids in pediatric populations.

EFFECTS OF MARIJUANA

The adverse effects of marijuana have been well documented, and studies have demonstrated the potential negative consequences of short- and long-term recreational use of marijuana in adolescents. These consequences include impaired short-term memory and decreased concentration, attention span, and problem solving, which clearly interfere with learning. Alterations in motor control, coordination, judgment, reaction time, and tracking ability have also been documented⁷; these may contribute to unintentional deaths and injuries among adolescents (especially those associated with motor vehicles if adolescents drive while intoxicated by marijuana).⁸ Negative health effects on lung function associated with smoking marijuana have also been documented, and studies linking marijuana use with higher rates of psychosis in patients with a predisposition to schizophrenia have recently been published,⁹ raising concerns about longer-term psychiatric effects. New research has also demonstrated that the adolescent brain, particularly the prefrontal cortex areas controlling judgment and decision-making, is not fully developed until the mid-20s, raising questions about how any substance use may affect the developing brain. Research has shown that the younger an adolescent begins using drugs, including marijuana, the more likely it is that drug dependence or addiction will develop in adulthood.¹⁰ A recent analysis of 4 large epidemiologic

trials found that marijuana use during adolescence is associated with reductions in the odds of high school completion and degree attainment and increases in the use of other illicit drugs and suicide attempts in a dose-dependent fashion that suggests that marijuana use is causative.¹¹

DECRIMINALIZATION EFFORTS AND EFFECTS

The illegality of marijuana has resulted in the incarceration of hundreds of thousands of adolescents, with overrepresentation of minority youth.¹² A criminal record can have lifelong negative effects on an adolescent who otherwise has had no criminal justice history. These effects can include ineligibility for college loans, housing, financial aid, and certain kinds of jobs.¹³ In states that have passed decriminalization laws, marijuana use is still illegal, although the consequences of possession and use are less punitive. Although these laws are not applicable to adolescents in all states, the changes in the law are intended to address and reduce the long-term effects that felony charges can have on youth and young adults.¹³ Continued efforts to address this problem are based on issues of social justice, given the disparate rate of adjudication for drug offenses for youth of racial minority groups compared with white youth. Advocates of decriminalization have also sought to increase the availability of drug treatment services.¹⁴

CONCLUSIONS

Ultimately, the behavioral and health risks associated with marijuana use by youth should be the most salient criteria in determining whether policies that are enacted are effective in minimizing harm. More information, including the legal status of marijuana for both recreational and medical use, the effect of legal status on rates of use by adolescents and young adults, research on

medical marijuana and the adverse effects of marijuana use, the impact of criminal penalties particularly on minority teens and communities, and adolescent brain development related to substance use, is available in the accompanying technical report.¹

RECOMMENDATIONS

1. Given the data supporting the negative health and brain development effects of marijuana in children and adolescents, ages 0 through 21 years, the AAP is opposed to marijuana use in this population.
2. The AAP opposes “medical marijuana” outside the regulatory process of the US Food and Drug Administration. Notwithstanding this opposition to use, the AAP recognizes that marijuana may currently be an option for cannabinoid administration for children with life-limiting or severely debilitating conditions and for whom current therapies are inadequate.
3. The AAP opposes legalization of marijuana because of the potential harms to children and adolescents. The AAP supports studying the effects of recent laws legalizing the use of marijuana to better understand the impact and define best policies to reduce adolescent marijuana use.
4. In states that have legalized marijuana for recreational purposes, the AAP strongly recommends strict enforcement of rules and regulations that limit access and marketing and advertising to youth.
5. The AAP strongly supports research and development of pharmaceutical cannabinoids and supports a review of policies promoting research on the medical use of these compounds. The AAP recommends changing marijuana from a Drug Enforcement Administration schedule I to

a schedule II drug to facilitate this research.

6. Although the AAP does not condone state laws that allow the sale of marijuana products, in states where recreational marijuana is currently legal, pediatricians should advocate that states regulate the product as closely as possible to tobacco and alcohol, with a minimum age of 21 years for purchase. Revenue from this regulation should be used to support research on the health risks and benefits of marijuana. These regulations should include strict penalties for those who sell marijuana or marijuana products to those younger than 21 years, education and diversion programs for people younger than 21 years who possess marijuana, point-of-sale restrictions, and other marketing restrictions.
7. In states where marijuana is sold legally, either for medical or recreational purposes, regulations should be enacted to ensure that marijuana in all forms is distributed in childproof packaging, to prevent accidental ingestion.
8. The AAP strongly supports the decriminalization of marijuana use for both minors and young adults and encourages pediatricians to advocate for laws that prevent harsh criminal penalties for possession or use of marijuana. A focus on treatment for adolescents with marijuana use problems should be encouraged, and adolescents with marijuana use problems should be referred to treatment.
9. The AAP strongly opposes the use of smoked marijuana because smoking is known to cause lung damage,¹⁵ and the effects of secondhand marijuana smoke are unknown.
10. The AAP discourages the use of marijuana by adults in the presence of minors because of the important influence of role modeling by adults on child and adolescent behavior.

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*The views expressed are those of the author and do not necessarily reflect the policy or position of the Department of the Army, Department of Defense, or the US Government.

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Exhibit #34

To the Iowa Board of Pharmacy:

We are facing a crisis of constitutional magnitude – in 2013 when I filed a petition with this board, there were 19 states that had accepted the medical use of marijuana – when I filed a petition with this board in 2014 there were 34 states that had accepted the medical use of marijuana. Our law says marijuana cannot be in state schedule 1 if it has accepted medical use in the United States. How can this board ignore the fact that 34 states have accepted the medical use of marijuana?

Last year, the Iowa Poll showed 58% of Iowans supported the medical use of marijuana. This year, that same poll is showing that 70% of Iowans now support the medical use of marijuana.

This has gotten so broken here in Iowa that our governor is suggesting that Iowans go to Illinois to obtain marijuana products that are not legal under current federal regulations and Illinois law does not allow non-residents to obtain these products.

Congress did not authorize federal administrative agencies to keep marijuana locked in federal schedule 1 forever. Recognizing that circumstances can change, Congress created schedules and ordered the federal administrative agencies to make adjustments when the need arises. The federal administrative agencies now act like they are paralyzed and can't deal with the situation because marijuana is a plant and not a pharmaceutical drug.

Some states have filed a petition for federal reclassification, but those same states have marijuana classified in their own state schedule 1, which means they are telling the federal administrative agencies that they believe marijuana should be in schedule 1. There is no logic in it. Why would the federal administrative agencies listen to such an inconsistent argument?

Unlike the federal administrative agencies, which are authorized by Congress to change the federal classification of marijuana, this board has simply been given the task of making a recommendation to our legislature, relieving this board of the ultimate decision on whether to reclassify marijuana in Iowa. Iowa should reclassify marijuana, and this board should advise the legislature to do so.

We cannot simply throw up our hands and tell everyone to violate state and federal law. Iowa law makes it clear this board should weigh in on this matter.

Iowa Board of Pharmacy, March 9, 2015

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654

March 9, 2015

Iowa Board of Pharmacy
400 SW 8th Street, Suite E
Des Moines, Iowa 50309-4688

Re: Marijuana Scheduling
Petition for Reconsideration

Dear Board Members:

This is a request for a recommendation from the board to the Iowa legislature. I am requesting this board recommend marijuana be removed from schedule 1 of the Iowa Uniform Controlled Substances Act because marijuana currently has accepted medical use in treatment in the United States. A recommendation from the board for reclassification of marijuana is not legally binding on the Iowa legislature. Recommendations on the scheduling of controlled substances in Iowa is not formal rule making.

I would like to address the concerns this board has previously raised:

At this board's November 19, 2014, hearing on my petition, the issue of hydrocodone's classification was raised by a member of the board.

FEDERAL RECLASSIFICATION OF HYDROCODONE COMBINATION PRODUCTS.

On August 22, 2014, the DEA reclassified hydrocodone combination products from federal schedule 3 to federal schedule 2. Persons handling these products were required to implement the required changes within 45 days, by October 6, 2014. The board compared my petition to a hypothetical petition to leave hydrocodone combination products in Iowa schedule 3 where they are currently located as of Monday, March 9, 2015. This board has not filed any

Iowa Board of Pharmacy, March 9, 2015

recommendation with the Iowa legislature to reclassify hydrocodone combination products from Iowa schedule 3 to Iowa schedule 2. No legislation was filed this year that would make this change. No one can file a petition to keep hydrocodone combination products in Iowa schedule 3, because those products currently are in Iowa schedule 3. No action has been taken by this board to change the classification of hydrocodone combination products in Iowa. The board currently has a notice about the change in federal classification of hydrocodone combination products on the home page of the board's website as of Monday, March 9, 2015.

At this board's January 5, 2015, hearing on my petition, the issue of opium's classification was raised by a member of the board.

FEDERAL AND STATE CLASSIFICATION OF OPIUM.

Opium has been in schedule 2 at both the state and federal level since 1971. Marijuana has been in schedule 1 at both the state and federal level since 1971. There has been no change in the classification of either of these two plants since 1971. The board compared marijuana to opium, saying that plants from which medicines are made are in schedule 1 and the pharmaceutical products made from those plants are in the lower schedules. The board was incorrect. The board said marijuana should be in the same classification as opium, but opium is in schedule 2, not schedule 1. The rationale for placing marijuana in the same classification as opium has been clearly articulated by the American Academy of Neurology (AAN) on December 17, 2014, and the American Academy of Pediatrics (AAP) on January 20, 2015. The board has already agreed with the rationale given by AAN and AAP, but failed to properly identify the correct schedule that opium is in.

At this board's January 5, 2015, hearing on my petition, the issue of cannabidiol's classification was raised by a member of the board.

FEDERAL AND STATE CLASSIFICATION OF CANNABIDIOL

Cannabidiol is in federal and state schedule 1. "DEA Form 225 - New Application for Registration" says that cannabidiol is in federal schedule 1 with a federal DEA Drug Code Number of 7372 (Marihuana is 7360 and Tetrahydrocannabinols is 7370). The definition of Marijuana in the Iowa Uniform Controlled Substances

Iowa Board of Pharmacy, March 9, 2015

Act includes cannabidiol and Marijuana is a schedule 1 controlled substance in Iowa. On January 5, 2015, this board recommended the legislature reclassify cannabidiol, which the board has the right and the duty to do, but this is inconsistent with federal scheduling.

CURRENT STATE LEGISLATION UNDER CONSIDERATION IN 2015

Finally, there have been several bills in the Iowa Legislature this year dealing with the classification of marijuana, SSB 1005, SSB 1205, and SF 282, all of which would have reclassified marijuana as a schedule 2 substance in Iowa. Although these bills died in the legislative funnel on March 6, 2015, they could still become law if they are attached as amendments to legislation that is still being considered. SSB 1243 is still an active bill which would expand the Medical Cannabidiol Act enacted into law last year in Iowa. This is the first year since the board recommended reclassifying marijuana to Iowa schedule 2 in 2010 that the Governor's Office of Drug Control Policy has not filed opposing legislation to keep marijuana in Iowa schedule 1. The Legislative Services Agency continues to say that reclassifying marijuana to schedule 2 would make it a prescription medicine in Iowa, which is false. Opium is not a prescription medicine in Iowa and opium is in Iowa schedule 2. The position statements of the American Academy of Neurology and the American Academy of Pediatrics make it clear that reclassifying marijuana to schedule 2 is for the purpose of removing the obstacles to research and finding safer methods of production and delivery.

Thank you!



Carl Olsen
Post Office Box 41381
Des Moines, Iowa 50311-0507
515-343-9933
carl@carl-olsen.com

Exhibit #35

State of Iowa
Board of Pharmacy

RiverPoint Business Park
400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688
<http://www.iowa.gov/ibpe>
Telephone: (515) 281-5944 Facsimile: (515) 281-4609

BOARD MEMBERS

SUSAN M. FREY, R. Ph.
Villisca

JAMES MILLER, R. Ph.
Dubuque

JUDITH M. TRUMPY
Ames

EDWARD L. MAIER, R. Ph., Mapleton
Chairperson

LLOYD K. JESSEN, R. Ph., JD., West Des Moines
Executive Director

BOARD MEMBERS

SHARON K. MEYER, Pharm. D.
Urbandale

LADONNA GRATIAS
Clive

EDWARD J. McKENNA, R. Ph.
Storm Lake

MINUTES

March 9-11, 2015

The Iowa Board of Pharmacy met on March 9-11, 2015, in the conference room at 400 SW Eighth Street, Des Moines, Iowa.

MEMBERS PRESENT

Edward L. Maier, Chairperson
James Miller, Vice-Chair
Susan M. Frey
LaDonna Gratias
Edward J. McKenna
Sharon K. Meyer

MEMBERS ABSENT

Judith M. Trumpy

SPEAKERS

Carl Olsen, Des Moines
Connie Nogart, West Des Moines
Sally Gaer, West Des Moines
Kari Sckerl, Waterloo
Ned Milenkovich, FLAVORx
Chad Baker, FLAVORx
Megan Myers, IPA
Cheri Schmit, Medicap/GRX Holdings
Anthony Pudlo, IPA
Katy Brown, Telligen

STAFF PRESENT

Lloyd Jessen, Executive Director
Meghan Gavin, Esq., Assistant Attorney
General
Laura Steffensmeier, Esq., Assistant
Attorney General
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary
Andrew Funk, Compliance Officer
Curt Gerhold, Compliance Officer
Mark Mather, Compliance Officer
Sue Mears, Compliance Officer
Jean Rhodes, Compliance Officer
Jennifer Tiffany, Compliance Officer
Jennifer O'Toole, Compliance Officer
Jim Wolfe, Compliance Officer

At 1:00 p.m., Edward Maier, Chairperson, called the meeting of the Iowa Board of Pharmacy to order on Monday, March 9, 2015.

March 9-11, 2015

Page 2 of 14

Approval of Open Session Minutes

The minutes of the January 5-6, 2015, meeting; the January 16, 2015, teleconference meeting; and the February 12, 2015, teleconference meeting were reviewed.

Motion by Susan Frey, seconded by LaDonna Gratias, to approve the open session minutes of the January 5-6, 2015, meeting as presented. Motion approved unanimously.

Motion by James Miller seconded by Edward McKenna, to approve the open session minutes of the January 16, 2015, teleconference meeting as presented. Motion approved unanimously.

Motion by Edward McKenna, seconded by LaDonna Gratias, to approve the open session minutes of the February 12, 2015, teleconference meeting as presented. Motion approved unanimously.

Requests

1. Marijuana Scheduling Petition for Reconsideration – Carl Olsen, Des Moines.

Motion by James Miller, seconded by Susan Frey, to deny the Petition for Reconsideration. Motion approved unanimously.

2. Approval to Continue Participation in Amicare Pharmacy Anticoagulation Clinic as an Authorized Pharmacist – Kari A. Sckerl, Iowa Pharmacist License No. 18670, Waterloo.

Motion by James Miller, seconded by Sharon Meyer, to approve Kari Sckerl as a qualified pharmacist to participate in the collaborative practice agreement. Motion approved unanimously.

3. Authorization to Participate in Unity Point at Home Infusion Pharmacy's Vancomycin Collaborative Practice Agreement – Patrick J. Walter.

Motion by Susan Frey, seconded by Edward McKenna, to approve the request. Motion approved unanimously.

4. Authorization to Participate in Unity Point at Home Infusion Pharmacy's Vancomycin Collaborative Practice Agreement – Jill Swallow.

Motion by James Miller, seconded by Edward McKenna, to approve the request. Motion approved unanimously.

5. Authorization to Participate in Unity Point at Home Infusion Pharmacy's Vancomycin Collaborative Practice Agreement – Melissa Wessels.

Motion by James Miller, seconded by Susan Frey, to approve the request. Motion approved unanimously.

6. Authorization to Participate in Unity Point at Home Infusion Pharmacy's Vancomycin Collaborative Practice Agreement – Tracy McVey.

Motion by Susan Frey, seconded by James Miller, to approve the request. Motion approved unanimously.

7. Request for Waiver – 657 I.A.C. Records – HyVee Pharmacy Clinic #1504, Bloomfield.

Motion by James Miller, seconded by Susan Frey to approve the request for two years with the condition Bloomfield Hy-Vee Pharmacy Clinic keep their records separate from the

March 9-11, 2015

Page 3 of 14

Ottumwa Pharmacy and the records are secured in a location that only the Bloomfield employees have access to. Motion approved unanimously.

8. Request for Waiver – 657 I.A.C. 6.16 Records – Hy-Vee Drugstore # 7057, Mount Pleasant.

Motion by Susan Frey, seconded by James Miller, to deny the request for waiver due to the storage facility not meeting board criteria. Motion approved unanimously.

9. Request for Internship Credit – Rania Abdelwahed, Cedar Rapids.

Motion by Susan Frey, seconded by LaDonna Gratiias, to approve the request granting credit for 1,200 hours of internship in lieu of life experience requiring Ms. Abdelwahed to complete an additional 300 hours of internship. Motion approved unanimously.

Rules/Legislation

1. Bill to Help Pharmacists Provide Medical Services to Older Americans in Under-served Areas – The Honorable Charles Grassley Press Release.

Informational item.

2. Iowa Board of Medicine Seeks Legislation to Expedite Multiple-State Licensure.

Informational item.

3. Comments on Pharmacy Compounding Rules – Ned Milenkovich, Much Shelist, P.C., Illinois.

Ned Milenkovich and Chad Baker addressed the Board regarding the proposed changes to Chapter 20, “Pharmacy Compounding Practices,” which would define compounding as including the flavoring of prescriptions, believing the proposed change would impact patient care and supports removing flavoring from the definition of compounding.

4. Adopted and Filed: Amends Chapter 3, “Pharmacy Technicians,” Chapter 6, “General Pharmacy Practice,” and Chapter 7, “Hospital Pharmacy Practice”; to rescind Chapter 13, “Sterile Compounding Practices”; and to rescind Chapter 20, “Pharmacy Compounding Practices,” and adopt a new Chapter 20, “Compounding Practices,” Iowa Administrative Code.

Motion by James Miller, seconded by Edward McKenna, to terminate current Notice of Intended Action based on comments and suggestions from the public and file a new proposed Notice of Intended Action. Motion approved unanimously. Copies are attached as Addendum A (Notice of Termination) and Addendum B (Notice of Intended Action.)

5. Adopted and Filed: Amends Chapter 8, “Universal Practice Standards.”

Motion by Susan Frey, seconded by LaDonna Gratiias, to approve for Adoption and Filing. Motion approved unanimously. A copy is attached as Addendum C.

Closed Session

At 2:22 p.m., motion by Susan Frey, seconded by LaDonna Gratiias, the Board voted unanimously by roll call vote to move into closed session pursuant to Iowa Code Section § 21.5(1)(a) to review records required by state or federal law to be kept confidential.

March 9-11, 2015

Page 4 of 14

At 2:30 p.m., while still in closed session, Edward McKenna moved that the Board go into open session, seconded by James Miller. Motion approved unanimously.

In open session, the following action was taken:

Motion by Susan Frey, seconded by James Miller, to grant request modifying October 10, 2013, Board Order by extending the time requirement for an additional 18 months starting March 9, 2015, for Janet Rote McEvoy. Motion approved unanimously.

Rules/Legislation

- 1. Adopted and Filed: Amends Chapter 36, "Discipline."

Motion by Susan Frey, seconded by LaDonna Gratiyas, to approve for Adoption and Filing as amended. Motion passed by roll call vote. James Miller and Edward McKenna voted nay. A copy is attached as Addendum D.

- 2. Adopted and Filed: Amends Chapter 6, "General Pharmacy Practice," Chapter 7, "Hospital Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 9, "Automated Medication Distribution Systems and Telepharmacy Services," Chapter 15, "Correctional Pharmacy Practice," Chapter 18, "Centralized Prescription Filling and Processing," Chapter 19, "Nonresident Pharmacy Practice, Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," and Chapter 23, "Long Term Care Pharmacy Practice."

Motion by Susan Frey, seconded by James Miller, to approve for Adoption and Filing. Motion approved unanimously. A copy is attached as Addendum E.

- 3. A Bill For an Act Creating the Medical Cannabis Act and Providing for Civil and Criminal Penalties and Fees.

Informational item.

Reports

Executive Director's Report.

- 1. Edward McKenna has been reappointed to a second term on the Board. Mr. McKenna's new term will be May 1, 2015, to April 30, 2018.
- 2. Jason Hansel of Bettendorf has been appointed to the Board effective May 1, 2015. Mr. Hansel will replace Susan Frey when Ms. Frey retires from the Board on April 30, 2015.
- 3. 50-Year Pharmacist List – Iowa Pharmacists Licensed in 1965.

A list of 26 pharmacists was provided for review.

- 4. Financial.

FY15 as of 02/28/15 (66.67% of FY completed)

Revenue Anticipated:	\$ 3,833,933
Revenue Y-T-D	\$ 2,945,063 (77%)
Carry-over from FY14	\$ 1,504,637

March 9-11, 2015

Page 5 of 14

FY15 Fee Receipts	\$ 1,440,426
Budget Allocation	\$ 3,833,933
Obligations Y-T-D	\$ 1,996,524 (52%)
Cash Fund Balance	\$ 1,445,069
\$ 850,000 reserved for database	
Fines/Civil Penalties Collected	\$ 43,250

5. Meetings and Travel.

- A. The Rules Committee has a meeting with a committee from the Iowa Board of Podiatry on March 10, 2015, to continue discussion relating to the sale of diabetic shoes and related items by pharmacies.
- B. The Iowa Pharmacy Recovery Network (IPRN) will hold its Spring Meeting on April 20, 2015, from 3:00 to 5:00 pm in Iowa City.
- C. The April Board Meeting is scheduled for April 28-29, 2015, at the Board office in Des Moines.
- D. A retirement dinner for Susan Frey will be held on Tuesday evening, April 28, 2015, in Des Moines.
- E. The 111th Annual Meeting of the National Association of Boards of Pharmacy (NABP) will be held in New Orleans, Louisiana on May 16-19, 2015.
- F. The Iowa Pharmacy Association (IPA) Annual Meeting will be held in Coralville on June 11-13, 2015.
- G. The June Board Meeting is scheduled for June 23-24, 2015, at the Board office in Des Moines.
- H. The 78th Annual Meeting of District Five NABP/AACP will be held in Fargo, North Dakota on August 6-8, 2015.
- I. The September Board Meeting is scheduled for September 1-2, 2015, at the Board office in Des Moines.

6. Iowa Pharmacist Recovery Network (IPRN) Report.

The IPRN Report was submitted for review.

7. NuCara Pharmacy #29, License No. 1450, Telepharmacy Quarterly Report.

NuCara Pharmacy submitted their Telepharmacy Quarterly Report for review.

8. Allen Hospital – Tech-Check-Tech Program Quarterly Report.

Allen Hospital submitted their Tech-Check-Tech Quarterly Report for review.

9. Baum Harmon Mercy Hospital – Quarterly Waiver Report.

Baum Harmon Mercy Hospital submitted their Quarterly Waiver Report for review.

10. Hy-Vee Pharmacy Fulfillment Center's 2014 Fourth Quarterly Error Report.

March 9-11, 2015

Page 6 of 14

Hy-Vee Pharmacy Fulfillment Center submitted their Fourth Quarterly Error Report for review.

11. Phase One – Third Quarterly Report- New Practice Model – Megan Myers, Iowa Pharmacy Association.

Megan Myers provided the third Quarterly New Practice Model Report.

12. Job Licenses in Spotlight as Uber Rises – New York Times (January 27, 2015 – online.)
Informational item.

13. Job Licensing Laws Need Thorough Review – Des Moines Register (February 20, 2015 – online.)

Informational item.

14. Iowa Prescription Monitoring Program (PMP) Conference – February 10, 2015.

A list of findings and recommendations from PMP conference attendees was provided for review. Changes to the PMP may be accomplished in three ways: (1) internal or administrative program changes; (2) rule revision to 657 Iowa Administrative Code Chapter 37; or (3) legislative changes to Iowa Code §124.551. A majority of attendees supported providing access to the PMP via “auto registration” for prescribers and pharmacists administratively by the Board and encouraged the Board to explore the possibility of providing that service. Discussion was held regarding auto registration; adding personnel to the board staff for the purpose of providing more services to providers and pharmacists; and the future funding needs of the PMP. Recommendations will be referred to the Rules Committee for further discussion. The Rules Committee will plan to meet with the PMP Advisory Council to discuss the recommendations. The Board will continue with the current system they are using and send a letter to registrants reminding them the PMP is available as an important clinical tool.

15. The Expanding Role of Pharmacists in a Transformed Health Care System – National Governors Association Center for Best Practices.

Board staff and Anthony Pudlo will meet with the Health Department to have dialogue about collaborative practice between pharmacists and non-physician prescribing practitioners.

16. State Board of Pharmacy Update.

The Pharmacy Technician Certification Board (PTCB) administers an accredited certification program for pharmacy technicians. This year marks the twentieth anniversary of the founding of PTCB.

Medication Safety and Adverse Drug Event Prevention Presentation – Katy Brown, Telligen

Katie Brown provided a presentation on Medication Safety and Adverse Drug Event Prevention. Telligen is a Quality Improvement Organization (QIO) for the states of Iowa, Colorado, and Illinois, contracted by the Centers for Medicare and Medicaid Services. QIO activities include direct technical assistance to physicians, clinical pharmacists, hospitals, nursing homes, and home health agencies to improve the outcomes of health care services. QIO’s mission is better care for individuals; better health for populations; and lower cost through improvement (affordable care.)

March 9-11, 2015

Page 7 of 14

Licensure/Registration

1. Premier Kids Care Inc., Hollywood, Florida, and Premier Kids Care Inc., Monroe, Georgia.

Motion by James Miller, seconded by Susan Frey, to approve the applications for Nonresident Iowa Pharmacy License. Motion approved unanimously.

2. Ashley Steele, West Burlington.

Motion by James Miller, seconded by Edward McKenna, to approve the Application for Pharmacy Technician Trainee Registration without restrictions. Motion approved unanimously.

Closed Session

At 4:40 p.m., motion by Susan Frey, seconded by Edward McKenna, the Board voted unanimously by roll call vote to move into closed session pursuant to Iowa Code Section § 21.5(1)(a) to review records required by state or federal law to be kept confidential.

At 5:02 p.m., while still in closed session, James Miller moved that the Board go into open session, seconded by Susan Frey. Motion approved unanimously.

In open session, the following actions were taken:

Motion by Susan Frey, seconded by Sharon Meyer, to approve request for license transfer for Benjamin Grote. Motion approved unanimously.

Motion by LaDonna Gratiias, seconded by James Miller, to approve request to extend validation of internship hours until May 31, 2015, for Veronica Montefusco. Motion approved unanimously.

Motion by James Miller, seconded by LaDonna Gratiias, to approve request to extend validation of internship hours until May 31, 2015, for Sharon Rosal. Motion approved unanimously.

Motion by James Miller, seconded by Susan Frey, to approve request to extend validation of internship hours and to retake the NAPLEX and MPJE examinations with a deadline of September 9, 2015, for B.M. Motion approved unanimously.

Complaints Against Non-Licensees

2015-05 Aetna Inc.

Motion by Susan Frey, seconded by Ed McKenna, to close with a referral to the Insurance Commissioner. Motion approved unanimously.

Executive Director's Retirement

Lloyd Jessen announced his retirement from the Executive Director's position at the Iowa Board of Pharmacy. Meghan Gavin provided the Board with information on how to proceed with filling the position. The Board may hire a National Search Firm or select a three board member committee to serve as the Board's Search Committee. The Board discussed the options of hiring a National Search Firm or selecting a three board member committee to serve as the Board's Search Committee to fill the Executive Director's position. Discussion was held regarding salary, position description, timeline, Request for Proposal, posting the position, transition, and an

March 9-11, 2015

Page 8 of 14

Interim Director. Edward Maier, Sharon Meyer, and James Miller will serve on the Board's Search Committee. The Search Committee and board staff will meet with a representative from the Department of Administrative Services on Wednesday afternoon, March 11, 2015, to discuss the Board's options for hiring a new Executive Director.

Closed Session

At 6:15 p.m., motion by Susan Frey, seconded by LaDonna Gratias, the Board voted unanimously by roll call vote to move into closed session for the following reasons:

For review of Closed Session Minutes pursuant to Iowa Code § 21.5(1)(a) because closed session minutes are confidential under Iowa Code § 21.5(4).

For Follow-Up Investigative Information pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigation or proceedings and § 21.5(1)(a) because complaints and investigative reports are confidential under Iowa Code § 272C.6(4).

For Settlement Agreement and Final Orders pursuant to Iowa Code § 21.5(1)(f) to discuss the decision to be rendered in a contested case.

For Combined Statement of Charges, Settlement Agreement, and Final Orders pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or proceedings and § 21.5(1)(f) to discuss the decision to be rendered in a contested case.

For Notice of Hearings and Statement of Charges pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or proceedings.

For Orders to Show Cause pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or proceedings.

For Complaints and Investigative Reports pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or proceedings and § 21.5(1)(a) because complaints and investigative reports are confidential under Iowa Code § 272C.6(4).

At 7:58 p.m., while still in closed session, Edward McKenna moved that the Board go into open session, seconded by James Miller. Motion approved unanimously.

At 8:00 p.m., the Board went to recess.

The meeting reconvened in open session on Tuesday, March 10, 2015, at 9:00 a.m.

TUESDAY, MARCH 10, 2015

MEMBERS PRESENT

Edward L. Maier, Chairperson
James Miller, Vice-Chair
Susan M. Frey
LaDonna Gratias
Edward J. McKenna
Sharon K. Meyer

STAFF PRESENT

Lloyd Jessen, Executive Director
Laura Steffensmeier, Esq., Assistant
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary
Andrew Funk, Compliance Officer
Curt Gerhold, Compliance Officer

March 9-11, 2015

Page 9 of 14

MEMBERS ABSENT

Judith M. Trumpy

Mark Mather Compliance Officer
Sue Mears, Compliance Officer
Jean Rhodes, Compliance Officer
Jennifer Tiffany, Compliance Officer
Jennifer O'Toole, Compliance Officer
Jim Wolfe, Compliance Officer

At 9:10 a.m., Edward Maier, Chairperson, called the meeting of the Iowa Board of Pharmacy to order.

Administrative Hearing

Case 2013-167 John Doe II

At 9:10 a.m., Margaret LaMarche, Administrative Law Judge, Department of Inspections and Appeals opened the record. Assistant Attorney General Laura Steffensmeier represented the State. Mr. Doe appeared without counsel. The hearing was conducted in the presence of the Board. The hearing was closed to the public.

The Board heard testimony of witnesses and examined exhibits.

At 9:52 a.m., the record was closed.

At 9:53 a.m., motion by Susan Frey, seconded by LaDonna Gratias, the Board voted unanimously by roll call vote to move into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case.

At 10:05 a.m., James Miller moved that the Board go into open session, seconded by LaDonna Gratias. Motion approved unanimously.

Motion by Susan Frey, seconded by LaDonna Gratias, to direct Administrative Law Judge Margaret LaMarche to draft the Order consistent with the Board's deliberations for case 2014-167 John Doe II. Motion approve unanimously.

Closed Session

At 10:20 a.m., motion by Susan Frey, seconded by LaDonna Gratias, the Board voted unanimously by roll call vote to move into closed session for Complaints and Investigative Reports pursuant to Iowa Code § 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or proceedings and § 21.5(1)(a) because complaints and investigative reports are confidential under Iowa Code § 272C.6(4).

At 11:02 a.m., Edward McKenna moved that the Board go into open session, seconded by Sharon Meyer. Motion approved unanimously.

In open session, the following actions were taken:

1. Settlement Agreement and Final Order.

Motion by James Miller, seconded by Edward McKenna, to approve the Settlement Agreement and Final Order in the following cases. Motion approved unanimously.

- A. Daniel Ashton, Jr., Pharmacist License No. 13182 of Effingham, Illinois. A copy of the Settlement Agreement and Final Order is attached as Addendum F.
- B. Olufemi Omodara, Pharmacist License No. 17817 of Goodyear, Arizona. A copy of the

March 9-11, 2015

Page 10 of 14

Settlement Agreement and Final Order is attached as Addendum G.

- C. Mary McMillian, Pharmacist License No. 19740 of Elgin. A copy of the Settlement Agreement and Final Order is attached as Addendum H.
- D. Rashid LTC Pharmacy, Pharmacy License No. 1129 of Fort Madison. A copy of the Settlement Agreement and Final Order is attached as Addendum I.
- E. David Tracey King, Pharmacist License No. 19586 of Burlington. A copy of the Settlement Agreement and Final Order is attached as Addendum J.
- F. Gwen Rugger, Pharmacy Support Person Registration No. 2675 of Coralville. A copy of the Settlement and Final Order is attached as Addendum K.
- G. Brady Rolfes, Pharmacy Technician Registration No. 18729 of Iowa City. A copy of the Settlement Agreement and Final Order is attached as Addendum L.
- H. Amanda Knouse, Pharmacy Technician Registration No. 20304 of Des Moines. A copy of the Settlement Agreement and Final Order is attached as Addendum M.
- I. Stacy Jahlas, Pharmacy Technician Registration No. 14928 of Belle Plaine. A copy of The Settlement Agreement and Final Order is attached as Addendum N.
- J. John E. Guck, Pharmacist License No. 18556 of Libertyville. A copy of the Settlement Agreement and Final Order is attached as Addendum O.
- K. Stephen Scott, Pharmacist License No. 18067 of Tipton. A copy of the Settlement Agreement and Final Order is attached as Addendum P.

2. Combined Statement of Charges, Settlement Agreement, and Final Order.

Motion by Susan Frey, seconded by James Miller, to approve the Combined Statement of Charges Settlement Agreement and Final Order in the case of Village Fertility Pharmacy, Nonresident Pharmacy License No. 4230 of Waltham, Massachusetts. Motion approved unanimously. A copy of the Combined Statement of Charges, Settlement Agreement, and Final Order is attached as Addendum Q.

3. Combined Notice of Hearing and Statement of Charges.

Motion by James Miller, seconded by LaDonna Gratias, to approve Notice of Hearing and Statement of Charges in the following cases. Motion approved unanimously.

- A. Weatherford Compounding Pharmacy, Nonresident Pharmacy License No. 4075 of Weatherford, Texas. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum R.
- B. Donald Versluys, Pharmacist License No. 15600 of Pella. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum S.
- C. Marquisha Haygood, Pharmacy Technician Registration No. 19605 of Des Moines. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum T.
- D. Sherri Marshall, Pharmacy Technician Registration No. 18129 of Des Moines. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum U.
- E. Mark Frahm, Pharmacist License No. 15271 of Ottumwa. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum V.
- F. Mary Mosher, Pharmacist License No. 20661 of Cedar Rapids. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum W.

4. Close With No Action.

March 9-11, 2015

Page 11 of 14

Motion by James Miller, seconded by Edward McKenna, to close with no further action the investigative file in complaint numbers: 2013-3579, 2013-4048, 2014-158, 2014-173, 2014-200, 2015-28, 2015-30, 2015-33, 2014-211, 2014-209, 2014-210, 2015-1, 2015-16, 2014-188, 2014-198, 2015-7, 2014-159, 2014-207, 2015-11, 2014-124, 2014-180, 2015-9, 2015-18, 2015-21, 2014-203, 2014-212, 2015-2, 2015-3, and 2015-4. Motion approved unanimously.

5. Letter of Education.

Motion by Susan Frey, seconded by Edward McKenna, to issue a Letter of Education to the pharmacy in 2014-204; pharmacist in 2014-119; and pharmacist in charge in 2014-2013. Motion approved unanimously.

6. Administrative Warning.

Motion by James Miller, seconded by Sharon Meyer, to issue an Administrative Warning to the pharmacist in 2015-29; pharmacy in 2014-214; and Controlled Substance Registrant in 2015-8. Motion approved unanimously.

7. Draft Statement of Charges.

Motion by James Miller, seconded by Edward McKenna, to draft Statement of Charges against the pharmacy in 2015-31; pharmacy in 2015-34; pharmacy and pharmacist in charge in 2015-10; technician in 2014-205; and technician in 2014-208. Motion approved unanimously.

8. Intent to Deny.

Motion by Edward McKenna, seconded by Ladonna Gratiyas, to issue Preliminary Notice of Intent to Deny License in case 2015-34. Motion approved unanimously. A copy of the Preliminary Notice of Intent to Deny License is attached as Addendum X.

9. Closed Minutes.

Motion by Susan Frey, seconded by James Miller, to approve the Closed Minutes of the February 12, 2015, teleconference meeting. Motion approved unanimously.

Assistant Attorney General Laura Steffensmeier left the room.

Closed Session

At 11:12 a.m., motion by Susan Frey, seconded by Sharon Meyer, the Board voted unanimously by roll call vote to move into closed session pursuant to Iowa Code § 21.5(1)(a) because ongoing investigations are confidential under Iowa Code § 272C.6(4).

At 11:14 a.m., James Miller moved that the Board go into open session, seconded by Edward McKenna. Motion approved unanimously.

In open session, the following action was taken:

March 9-11, 2015

Page 12 of 14

Motion by James Miller, seconded by LaDonna Gratias, to approve Order Denying Motion to Quash Subpoena for Walgreens Pharmacy 05721, Pharmacy License No. 355. Motion approved unanimously. A copy of the Order Denying Motion to Quash Subpoena is attached as Addendum Y.

Closed Session

At 11:15 a.m., motion by Susan Frey, seconded by James Miller, the Board voted unanimously by roll call vote to move into closed session pursuant to Iowa Code § 21.5(1)(f) to discuss the decision to be rendered in a contested case.

At 11:23 a.m., James Miller moved that the Board go into open session, seconded by LaDonna Gratias. Motion approved unanimously.

In open session, the following action was taken:

Motion by James Miller, seconded by Susan Frey, to approve the Findings of Fact, Conclusions of Law, Decision and Order for Robert Osborn, Pharmacist License No. 19079 of Rock Island, Illinois. A copy of the Findings of Fact, Conclusions of Law, Decision and Order is attached as Addendum Z.

Legislation – Senate File 453

The Board reviewed Senate File 453 a bill for an Act relating to the Board of Pharmacy, including nonresident pharmacy and outsourcing facility licensure, pharmacist supervision of pharmacy technicians, alternate board members, and enforcement authority has passed the Committee and is now in the Senate.

Administrative Hearing

Matthew Biggerstaff, D.O., CSA Registration No. 1306092 of Ankeny.

At 1:00 p.m. Margaret LaMarche, Administrative Law Judge, Department of Inspections and Appeals opened the record. Assistant Attorney General Laura Steffensmeier represented the State. Mr. Biggerstaff was represented by Michael Sellers. The hearing was conducted in the presence of the Board. The hearing was closed to the public.

At 1:10 p.m., the record was closed.

At 1:11 p.m., motion by Susan Frey, seconded by Edward McKenna, the Board voted unanimously by roll call vote to move into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case.

At 2:00 p.m., Susan Frey moved that the Board go into open session, seconded by Edward McKenna. Motion approved unanimously.

Motion by Susan Frey, seconded by Sharon Meyer, to deny Request for Stay and direct Administrative Law Judge Margaret LaMarche to draft the Order consistent with the Board's deliberations for the Chair's signature in the Matthew Biggerstaff case. Motion passed by roll call vote. James Miller and Edward McKenna voted nay. A copy of Order Denying Motion for Stay is attached as Addendum AA.

Motion to Dismiss - Ameridose, LLC., License Nos. 3828, 3829, 6859, 6569

March 9-11, 2015

Page 13 of 14

Motion by James Miller, seconded by Susan Frey to dismiss. Motion approved unanimously. A copy of the Order is attached as Addendum BB.

At 3:00 p.m., the Board went to recess.

The meeting reconvened in open session on Wednesday, March 11, 2015, at 9:00 a.m.

WEDNESDAY, MARCH 11, 2015

MEMBERS PRESENT

Edward L. Maier, Chairperson
James Miller, Vice-Chair
LaDonna Gratias
Edward J. McKenna
Sharon K. Meyer

STAFF PRESENT

Meghan Gavin, Esq., Assistant Attorney
General
Laura Steffensmeier, Esq., Assistant
Attorney General
Becky Hall, Secretary

MEMBERS ABSENT

Susan M. Frey
Judith M. Trumpy

At 9:00 a.m., Edward Maier, Chairperson, called the meeting of the Iowa Board of Pharmacy to order.

Administrative Hearing

Bauder Pharmacy, Inc., Pharmacy License No. 222, Des Moines.

At 9:00 a.m., Margaret LaMarche, Administrative Law Judge, Department of Inspections and Appeals opened the record. Assistant Attorney General Meghan Gavin represented the State. Bauder Pharmacy was represented by Guy Cook and Adam Zenor. The hearing was conducted in the presence of the Board. The hearing was open to the public.

The Board heard testimony of witnesses and examined exhibits.


At 11:24 a.m., the record was closed.

At 11:25 a.m., motion by LaDonna Gratias, seconded by Edward McKenna, the Board voted unanimously by roll call vote to move into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case.

At 11:55 a.m., Edward McKenna moved that the Board go into open session, seconded by James Miller. Motion approved unanimously.

Motion by James Miller, seconded by Edward McKenna, to direct Administrative Law Judge Margaret LaMarche to draft the Order consistent with the Board's deliberations in the Bauder case. Motion approved unanimously.

Motion by James Miller, seconded by Sharon Meyer, to adjourn at 11:58 a.m. on March 11, 2015.



Becky Hall
Recording Secretary

March 9-11, 2015

Page 14 of 14



Therese Witkowski
Executive Officer



Edward L. Maier
Board Chair

APPROVED THIS 28th DAY OF April, 2015.

Exhibit #36

BEFORE THE IOWA BOARD OF PHARMACY

Carl Olsen)	
)	
)	REQUEST FOR CLARIFICATION
)	
)	

Dated: November 2, 2015

In response to the petition filed by Carl Olsen on July 7, 2014, the Board issued an order on January 5, 2015 (see Addendum B attached to the Board Meeting Minutes from January 5, 2015) recommending the rescheduling of cannabidiol (CBD). I've attached the copy that was provided to me by the Board at the time the ruling was made.

In reviewing the Board's proposed changes to the schedules in Iowa Code Chapter 124 on the agenda for the November 4, 2015 Board Meeting, the rescheduling of cannabidiol (CBD) is not included in the proposed legislation. <https://pharmacy.iowa.gov/document/proposed-legislation-iowa-code-chapter-124-controlled-substances-scheduling-actions>

I would like to know the reason the January 5, 2015 recommendation was not included in the proposed changes to the schedules in Iowa Code Chapter 124 for the 2016 legislative session.

Thank you!

Respectfully submitted,



Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

Exhibit #37

From: [Gavin, Meghan \[AG\]](#)
To: ["Carl Olsen"](#)
Cc: [Jorgenson, Debbie \[IBPE\]](#); [Hall, Becky \[IBPE\]](#); [Witkowski, Terry \[IBPE\]](#); [Funk, Andrew \[IBPE\]](#)
Subject: RE: Request for clarification
Date: Thursday, November 5, 2015 10:14:27 AM

Mr. Olsen,

As I explained yesterday, I do not have authority to speak on behalf of the Board. So please do not infer from my comments yesterday or today, a Board position or response to your request. Board staff also does not have authority to speak on behalf of the Board. Any response to your request has to come from the Board.

You submitted a "Request for Clarification" to the Board on November 2, a day prior to the start of the Board's November meeting. Your request was simply submitted too late to be placed on the Board's November agenda. Iowa law requires the Board to give the public reasonable notice of any issue before the Board or action the Board may take.

If you would like to have the Board consider your request in January it can and will be placed on the agenda. The Board does not have a regularly scheduled meeting until that time. Please let us know if you would like the Board to consider your request at its January meeting.

I will also note, that a "Request for Clarification" is not a recognized action under the Iowa Administrative Procedure Act. As a result, I do not believe it mandates a written response. Nevertheless, the Board will consider your request in January if that is what you desire.

Thank you
Meghan

From: Carl Olsen [<mailto:carl-olsen@mchsi.com>]
Sent: Thursday, November 05, 2015 6:07 AM
To: Gavin, Meghan [AG]
Cc: Jorgenson, Debbie [IBPE]; Hall, Becky [IBPE]; Witkowski, Terry [IBPE]; Funk, Andrew [IBPE]
Subject: RE: Request for clarification

I would also like to know what steps the board took to notify the legislature.

I'll follow up with a supplemental request now that I have a better idea of what actually happened.

Carl Olsen
130 E Aurora Ave
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

From: Carl Olsen [<mailto:carl-olsen@mchsi.com>]

Sent: Thursday, November 5, 2015 5:59 AM

To: 'Meghan.Gavin@iowa.gov' <Meghan.Gavin@iowa.gov>

Cc: 'debbie.jorgenson@iowa.gov' <debbie.jorgenson@iowa.gov>; 'becky.hall@iowa.gov' <becky.hall@iowa.gov>; 'terry.witkowski@iowa.gov' <terry.witkowski@iowa.gov>; 'andrew.funk@iowa.gov' <andrew.funk@iowa.gov>

Subject: RE: Request for clarification

Hi Meghan,

We spoke briefly yesterday about my request. I did not know the scheduling recommendation the board made to move cannabidiol from schedule 1 to schedule 2 on January 5, 2015, was for 2015. It does not say what year it is for and nothing was ever filed in the legislature.

Because the board pre-files a bill every year with proposed scheduling changes for Iowa Code Chapter 124, I just assumed it would be in this year's legislation for 2016. Obviously, per the explanation you gave me, that is not going to happen now.

You asked me if I would like this on the agenda for the next meeting, but that would just be an exercise in futility because it would be too late to get this into the legislation the board is going to file for 2016. That is obviously the point of my request. I thought it was going to be included in the next bill the board filed with the legislature. It is my intent to seek judicial review, and I filed that request because the proposed legislation for 2016 does not include cannabidiol. It sounds like it was not an oversight, but an intentional omission by the board.

I would like a written response explaining why the board took this unusual approach to this particular substance.

Thank you!

Carl Olsen
130 E Aurora Ave
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

From: Carl Olsen [<mailto:carl-olsen@mchsi.com>]

Sent: Monday, November 2, 2015 8:40 AM

To: 'terry.witkowski@iowa.gov' <terry.witkowski@iowa.gov>; 'andrew.funk@iowa.gov' <andrew.funk@iowa.gov>

Cc: 'debbie.jorgenson@iowa.gov' <debbie.jorgenson@iowa.gov>; 'becky.hall@iowa.gov' <becky.hall@iowa.gov>

Subject: Request for clarification

Please see attached PDF file.

Thank you!

Carl Olsen
130 E Aurora Ave
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

Exhibit #38

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654

November 15, 2015

Andrew Funk
Executive Director
Iowa Board of Pharmacy
400 S.W. Eighth Street, Suite E
Des Moines, IA 50309-4688

Dear Mr. Funk:

Under the **Iowa Open Records Law § 22.1 et seq.**, I am requesting an opportunity to inspect or obtain copies of public records that show any activity on the decision the board made on January 5, 2015, to recommend the reclassification of cannabidiol.

In response to a petition I filed on July 7, 2014, the Board issued an order on January 5, 2015 (see Addendum B attached to the Board Meeting Minutes from January 5, 2015) recommending the rescheduling of cannabidiol (CBD). I've attached the copy that was provided to me by the Board at the time the ruling was made.

I would like copies of any correspondence the board may have had with anyone in the state legislature, with anyone in any other executive branch agency, or with the office of the governor.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the controlled substance scheduling process in Iowa. I am a researcher. This information is not being sought for commercial purposes.

The Iowa Open Records Law requires a response time within ten to twenty business days. If access to the records I am requesting will take longer than that time period, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

A handwritten signature in black ink that reads "Carl Olsen". The signature is written in a cursive style with a long horizontal flourish at the end.

Carl Olsen

Phone: 515-343-9933

Email: carl-olsen@mchsi.com

Exhibit #39

From: [Gavin, Meghan \[AG\]](#)
To: carl-olsen@mchsi.com
Cc: [Funk, Andrew \[IBPE\]](#); [Witkowski, Terry \[IBPE\]](#); [Steffensmeier, Laura \[AG\]](#)
Subject: RE: Request for Clarification
Date: Tuesday, November 17, 2015 10:00:12 AM

Mr. Olsen,

First, I believe your request was distributed to everyone – I just happened to be in front of your seat.

Second, the Board strives to stay on time during its meetings but as noted in the agenda all times are approximate. I apologize for any inconvenience, but agenda items from time to time take longer than staff projects.

Third, as I previously stated your document was submitted too late to be placed on the agenda for the November board meeting as it was submitted the day before the meeting. The request and your comments certainly made it appear that you were requesting Board action or a response of some sort. Indeed your last email communication demanded a response. There was nothing in the request indicating that it was a comment on one of the Board's November agenda items.

Now I am confused – do you want the Board to consider your request in January or not? Please advise.

Thank you,
Meghan

From: carl-olsen@mchsi.com [mailto:carl-olsen@mchsi.com]
Sent: Monday, November 16, 2015 8:01 AM
To: Gavin, Meghan [AG]
Cc: Funk, Andrew [IBPE]; Witkowski, Terry [IBPE]
Subject: Request for Clarification

Hi Meghan,

That document I submitted on November 4 was intended as a comment on the legislative proposal that was on the agenda for 11:00 a.m. that morning. When that item was pushed back to 1:00 p.m., I did not have time off from work to stay.

I did not submit that document for the next board meeting.

I'm not sure why it was given to you. I saw it laying in front of you, which is why I spoke to you.

Thank you!

Carl

Exhibit #40

From: [Witkowski, Terry \[IBPE\]](#)
To: [Carl Olsen](#); [Funk, Andrew \[IBPE\]](#)
Subject: RE: Open Records Request
Date: Wednesday, November 25, 2015 7:10:39 AM
Attachments: [Minutes 2-17-2010.pdf](#)
[Marijuana Recommendation 2015.pdf](#)
[2015 Recommendation 2a.docx](#)
[2015 Recommendation 1.docx](#)
[2015 Recommendation 2.docx](#)
[Medical Marijuana Recommendation 2-17-2010.doc](#)

Carl,

I apologize. I should have realized that the attachments would not follow the converted emails. I have attached the original attachments to the emails previously delivered. Some of these are duplicates but I wanted to make sure to provide all attachments as they were originally delivered.

Therese (Terry) Witkowski
Executive Officer
Iowa Board of Pharmacy
terry.witkowski@iowa.gov
515-281-6676

The Iowa Board of Pharmacy promotes, preserves, and protects the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices. Iowa Code § 155A.2(1).

From: Carl Olsen [mailto:carl-olsen@mchsi.com]
Sent: Tuesday, November 24, 2015 5:50 PM
To: Witkowski, Terry [IBPE]; Funk, Andrew [IBPE]
Subject: RE: Open Records Request

Thank you, Terry!

It appears the 2010 recommendation was involved in these communications, which is good. That was a nice surprise.

It's hard to tell exactly what documents were attached to these emails. The attached documents are missing.

I've have two issues I am currently considering.

I have an appeal pending in the Iowa Supreme Court from the 2013 ruling I got from the board. I'm pro se and I made two technical errors that caused delays.

First, I thought that because I had filed the transcript of my district court hearing with the district court it would be part of the record in the supreme court. The Supreme Court wants a certified copy from the court reporter, so that caused a delay of two or three months. The supreme court did not send me a default notice. I just asked them what was taking so long.

Second, I did not order a certified copy of the entire record from the district court after I filed my final reply brief, so that caused another delay of two or three months.

My case will probably be decided sometime in the next six months, but it might have been decided already if I had not made those errors.

The other issue is that SF 484 and HF 567 both contain the board's 2010 recommendation as Senate amendments.

I have been planning to appeal from the January 2015 board ruling on my 2014 petition, but that might not make much sense if the legislature changes the schedule in the next few months. So, I'll probably just wait now and see what happens. The delays I caused may not be bad in the overall scheme of things.

I have been thinking the board has not been aggressive enough, but these communications and the ones Lloyd sent me in 2010 show that there is a lot of stuff that goes on behind the scenes that it's hard for me to know about. I can see the legislature is considering this matter, and I do see that 2010 recommendation was part of the communications earlier this year.

The Iowa Senate voted 44-0-6 to accept the board's 2010 recommendation on April 15, 2015, this year. But, then a lot of them voted against it when it was added to HF 567.

This is just hard to follow.

I've been having a discussion with Senator Grassley about this on the federal level. He seems to think cannabidiol will be approved soon and that rescheduling the plant might make sense if that happens. That was my reasoning in my 2014 petition which the board's subcommittee accepted in December of 2014, and then the board rejected in January of 2015. Cannabidiol comes from a plant. All of the other cannabinoids that are federally scheduled in schedule 2 or lower are made synthetically, so cannabis plants are not used to make them. That has always been the reason marijuana has stayed in schedule 1. As far as I'm concerned, that has led to the recent outbreak of poisonings from synthetic cannabidoids. I believe the Iowa Legislature would be doing the right thing to adopt the board's 2010 recommendation.

Carl Olsen
130 E Aurora Ave

Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

From: Witkowski, Terry [IBPE] [<mailto:Terry.Witkowski@iowa.gov>]
Sent: Tuesday, November 24, 2015 5:10 PM
To: Carl Olsen <carl-olsen@mchsi.com>; Funk, Andrew [IBPE] <Andrew.Funk@iowa.gov>
Subject: RE: Open Records Request

Carl,

After a careful search of my email communications and Lloyd's email communications, I found the attached emails relative to your request. Regarding the email regarding Senator Sodder's request, the initial meeting was cancelled via telephone. A later meeting was held (notification/invitation via telephone) and I did attend and answer questions of the committee. There is no written record of that subsequent meeting.

It appears that the Board's recommendation may have been delivered to the Governor's Office and the Legislature in hard copy. I can find no communication regarding that delivery.

Therese (Terry) Witkowski
Executive Officer
Iowa Board of Pharmacy
terry.witkowski@iowa.gov
515-281-6676

The Iowa Board of Pharmacy promotes, preserves, and protects the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices. Iowa Code § 155A.2(1).

From: Carl Olsen [<mailto:carl-olsen@mchsi.com>]
Sent: Sunday, November 15, 2015 8:12 PM
To: Funk, Andrew [IBPE]; Witkowski, Terry [IBPE]
Subject: Open Records Request

Dear Mr. Funk,

See the attached PDF file.

A hard copy is in the mail and you should receive it this week.

Thank you!

Carl Olsen
130 E Aurora Ave
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com

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Exhibit #40-1

From: [Jessen, Lloyd \[IBPE\]](#)
To: [Engel, Catherine \[LEGIS\]](#)
Cc: [Tabor, Eric \[AG\]](#); [Sodders, Steve \[LEGIS\]](#); [Steffensmeier, Laura \[AG\]](#); [Witkowski, Terry \[IBPE\]](#)
Subject: RE: Senate Judiciary Meeting Senator Sodder bill - moving marijuana from schedule I to schedule II
Date: Friday, January 16, 2015 1:40:00 PM

Ms. Engel,

Thank you for your e-mail. I have also heard directly from Senator Sodders. Yes, I plan to attend the subcommittee meeting on January 20 at 4:00 p.m. and I look forward to providing the requested information. It will be helpful to have our assistant attorney general, Laura Steffensmeier, in attendance at the meeting as well.

Sincerely,

Lloyd

Lloyd K. Jessen, R.Ph., J.D.
Executive Director
Iowa Board of Pharmacy
515.281.8630 Direct Line
lloyd.jessen@iowa.gov

From: Engel, Cathy [LEGIS] [mailto:Cathy.Engel@legis.iowa.gov]
Sent: Friday, January 16, 2015 1:33 PM
To: Jessen, Lloyd [IBPE]
Cc: Tabor, Eric [AG]; Sodders, Steve [LEGIS]
Subject: Senate Judiciary Meeting Senator Sodder bill - moving marijuana from schedule I to schedule II

Executive Director Jessen,

I contacted your office today regarding an invitation from Senator Steve Sodders to attend his subcommittee meeting on [SSB 1005](#) relating to the reclassification of marijuana from Schedule I to Schedule II. There is an additional item in the bill, but he is only asking for your expertise relating to the reclassification piece. The subcommittee meeting is scheduled for this Tuesday, January 20th in Room 24 of the Capitol, behind the Senate Chamber at 4:00. You may have already been in contact with Senator Sodders. I also spoke with Eric Tabor. He wanted me to be sure to share with you that Laura Steffensmeier would be available to be at the meeting to provide any support you might need. The goal of this request is to insure that the subcommittee will receive a knowledgeable and accurate explanation regarding the implications of reclassifying marijuana. Thank you.

Cathy

Catherine H. Engel
Research Analyst
Senate Democratic Caucus
515.281.8688
Cathy.engel@legis.iowa.gov

Exhibit #40-2

From: comforms@LEGIS.IOWA.GOV
To: COM_S_JUD_EX@LISTSERV.LEGIS.IOWA.GOV
Subject: CANCELLED: SSB 1005 (Senate) Meeting 01/20/2015 4:00 PM
Date: Tuesday, January 20, 2015 10:03:04 AM
Attachments: [meeting.ics](#)

Cancellation of Subcommittee Meeting

Committee: Judiciary (Senate)

Subcommittee: [SSB 1005](#)

Bill Title: A study bill for an act relating to the reclassification of marijuana, including tetrahydrocannabinols, and the possession of marijuana, and providing a penalty. 1/13/15

Subcommittee: Sodders, Hogg, and Schneider

Members: Sodders-CH, Schneider, Hogg

Date: 01/20/2015 4:00 PM

Location: RM 24

Agenda:

DIscuss [SSB 1005](#)

This message was automatically generated. Please do not reply to it.

Exhibit #40-3

From: Witkowski, Terry [IBPE]
To: [Bronsink, Josh \[LEGIS\]](#)
Subject: Board of Pharmacy recommendations re marijuana
Date: Tuesday, April 07, 2015 11:58:00 AM
Attachments: [Marijuana Recommendation 2015.pdf](#)
[Medical Marijuana Recommendation 2-17-2010.doc](#)
[Minutes 2-17-2010.pdf](#)

Josh,

Attached are the minutes of the Board for February 17, 2010, when the Board made its initial recommendation regarding reclassification of marijuana. I have also attached the recommendation made by the Board at that time.

Also attached is the formal recommendation made to the Iowa Legislature earlier this year.

Please let me know if you have any questions or need anything further. I will also check to see if any other states have rescheduled marijuana and will let you know what I find.

Following is a link to S 683, the bill that is currently being considered in the U.S. Senate.

<https://www.congress.gov/bill/114th-congress/senate-bill/683>

Therese (Terry) Witkowski

Interim Director/Executive Officer

Iowa Board of Pharmacy

400 SW 8th Street, Suite E

Des Moines, IA 50309-4688

515-281-6676 voice

515-281-4609 fax

terry.witkowski@iowa.gov

www.iowa.gov/ibpe

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Exhibit #41

SENATE/HOUSE FILE _____
BY (PROPOSED BOARD OF PHARMACY
BILL)

A BILL FOR

1 An Act making changes to the controlled substance schedules,
2 and providing penalties, and including an effective date
3 provision.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. _____ H.F. _____

1 Section 1. Section 124.204, subsection 4, Code 2016, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. *al.* 4-methyl-N-ethylcathinone. Other names:
4 4-MEC, 2-(ethylamino)-1-(4-methylphenyl)propan-1-one.

5 NEW PARAGRAPH. *am.* 4-methyl-alpha-
6 pyrrolidinopropiophenone. Other names: 4-MePPP,
7 MePPP, 4-methyl-[alpha]-pyrrolidinopropiophenone,
8 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one.

9 NEW PARAGRAPH. *an.* Alpha-pyrrolidinopentiophenone.
10 Other names: [alpha]-PVP, [alpha]-pyrrolidinovalerophenone,
11 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one.

12 NEW PARAGRAPH. *ao.* Butylone. Other names: bk-MBDB,
13 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one.

14 NEW PARAGRAPH. *ap.* Pentedrone. Other
15 names: [alpha]-methylaminovalerophenone,
16 2-(methylamino)-1-phenylpentan-1-one.

17 NEW PARAGRAPH. *aq.* Pentylone. Other names: bk-MBDP,
18 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one.

19 NEW PARAGRAPH. *ar.* 4-fluoro-N-methylcathinone.
20 Other names: 4-FMC, flephedrone,
21 1-(4-fluorophenyl)-2-(methylamino)propan-1-one.

22 NEW PARAGRAPH. *as.* 3-fluoro-N-methylcathinone. Other
23 names: 3-FMC, 1-(3-fluorophenyl)-2-(methylamino)propan-1-one.

24 NEW PARAGRAPH. *at.* Naphyrone. Other names:
25 naphthylpyrovalerone, 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)
26 pentan-1-one.

27 NEW PARAGRAPH. *au.* Alpha-pyrrolidinobutiophenone. Other
28 names: [alpha]-PBP, 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one.

29 Sec. 2. Section 124.204, subsection 9, Code 2016, is amended
30 by adding the following new paragraphs:

31 NEW PARAGRAPH. *g.* Quinolin-8-yl 1-pentyl-1H-indole-
32 3-carboxylate. Other names: PB-22, QUPIC.

33 NEW PARAGRAPH. *h.* Quinolin-8-yl 1-(5-fluoropentyl)-1H-
34 indole-3-carboxylate. Other names: 5-fluoro-PB-22, 5F-PB-22.

35 NEW PARAGRAPH. *i.* N-(1-amino-3-methyl-1-oxobutan-2-yl)-

S.F. _____ H.F. _____

1 1-(4-fluorobenzyl)-1H-indazole-3-carboxamide. Other name:
2 AB-FUBINACA.

3 NEW PARAGRAPH. *j.* N-(1-amino-3,3-dimethyl-1-oxobutan-
4 2-yl)-1-pentyl-1H-indazole-3-carboxamide. Other name:
5 ADB-PINACA.

6 NEW PARAGRAPH. *k.* N-(1-amino-3-methyl-1-oxobutan-2-yl)-
7 1-(cyclohexylmethyl)-1H-indazole-3-carboxamide. Other name:
8 AB-CHMINACA.

9 NEW PARAGRAPH. *l.* N-(1-amino-3-methyl-1-oxobutan-2-yl)-
10 1-pentyl-1H-indazole-3-carboxamide. Other name: AB-PINACA.

11 NEW PARAGRAPH. *m.* [1-(5-fluoropentyl)-1H-indazol-3-yl]
12 (naphthalen-1-yl)methanone. Other name: THJ-2201.

13 NEW PARAGRAPH. *n.* N-(1-phenethylpiperidin-4-yl)-N-
14 phenylacetamide. Other name: acetyl fentanyl.

15 NEW PARAGRAPH. *o.* N-(1-amino-3,3-dimethyl-1-oxobutan-
16 2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide. Other
17 names: MAB-CHMINACA; ADB-CHMINACA.

18 Sec. 3. Section 124.206, subsection 2, paragraph a,
19 unnumbered paragraph 1, Code 2016, is amended to read as
20 follows:

21 Opium and opiate, and any salt, compound, derivative,
22 or preparation of opium or opiate, excluding apomorphine,
23 thebaine-derived butorphanol, dextrorphan, nalbuphine,
24 nalmefene, naloxegol, naloxone, and naltrexone, and their
25 respective salts, but including the following:

26 Sec. 4. Section 124.206, subsection 2, paragraph d, Code
27 2016, is amended to read as follows:

28 *d.* Coca leaves and any salt, compound, derivative, or
29 preparation of coca leaves. ~~Decocainized coca leaves or~~
30 ~~extractions of coca leaves, which extractions do not contain~~
31 ~~cocaine or ecgonine, are excluded from this paragraph. The~~
32 ~~following substances and their salts, optical and geometric~~
33 ~~isomers, derivatives, and salts of derivatives and optical and~~
34 ~~geometric isomers, and, including cocaine and ecgonine and~~
35 their salts, isomers, derivatives, and salts of isomers and

S.F. _____ H.F. _____

1 derivatives, and any salt, compound, derivative, or preparation
2 thereof that is chemically equivalent or identical to any of
3 such substances, are included in this paragraph except that the
4 substances shall not include:

5 (1) Cocaine Decocainized coca leaves or extractions of coca
6 leaves, which extractions do not contain cocaine or ecgonine.

7 (2) Ecgonine [123]ioflupane.

8 Sec. 5. Section 124.208, subsection 5, paragraph a,
9 subparagraphs (3) and (4), Code 2016, are amended by striking
10 the subparagraphs.

11 Sec. 6. Section 124.210, subsection 2, Code 2016, is amended
12 by adding the following new paragraph:

13 NEW PARAGRAPH. c. 2-[(dimethylamino)methyl]-1-
14 (3-methoxyphenyl)cyclohexanol, its salts, optical and geometric
15 isomers, and salts of these isomers (including tramadol).

16 Sec. 7. Section 124.210, subsection 3, Code 2016, is amended
17 by adding the following new paragraphs:

18 NEW PARAGRAPH. bb. Alfaxalone.

19 NEW PARAGRAPH. bc. Suvorexant.

20 Sec. 8. Section 124.210, subsection 7, Code 2016, is amended
21 by adding the following new paragraph:

22 NEW PARAGRAPH. c. Eluxadoline (5-[[[(2S)-2-amino-
23 3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-
24 (4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic
25 acid) (including its optical isomers) and its salts, isomers,
26 and salts of isomers.

27 Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
28 immediate importance, takes effect upon enactment.

29 EXPLANATION

30 The inclusion of this explanation does not constitute agreement with
31 the explanation's substance by the members of the general assembly.

32 This bill modifies the controlled substance schedules, and
33 provides penalties.

34 The bill adds 10 synthetic cathinones and eight synthetic
35 cannabinoids and acetyl fentanyl to the list of substances

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1 classified as schedule I controlled substances. The board
2 of pharmacy has determined that these substances should be
3 classified as schedule I controlled substances because each
4 substance has a high potential for abuse and no accepted
5 medical use in the United States.

6 The bill removes hydrocodone-combination products from
7 the list of substances classified as schedule III controlled
8 substances. Hydrocodone, as a single-entity substance,
9 is currently classified as a schedule II controlled
10 substance. The change under the bill effectively makes all
11 hydrocodone-containing products subject to the controls,
12 security, reporting, and penalty provisions for schedule II
13 controlled substances.

14 The bill removes naloxegol, a new molecular entity and
15 derivative of naloxone, from control as a schedule III
16 controlled substance. The federal food and drug administration
17 recently approved naloxegol for the treatment of opioid-induced
18 constipation in adults with chronic noncancer pain. The bill
19 also removes [\123\I]ioflupane from control as a schedule
20 II controlled substance. This substance is a new molecular
21 entity and is the active pharmaceutical ingredient in the
22 drug DaTscan, recently approved by the federal food and drug
23 administration for use in diagnosis of patients suspected of
24 Parkinson's disease.

25 The bill also classifies the substance commonly known as
26 tramadol, a centrally acting opioid analgesic, as a schedule
27 IV controlled substance. This substance was previously
28 marketed and distributed as a noncontrolled prescription
29 drug. Effective August 18, 2014, the federal drug enforcement
30 administration classified tramadol as a schedule IV controlled
31 substance under federal law.

32 The bill also classifies alfaxalone, a neurosteroid with
33 central nervous system depressant properties, as a schedule IV
34 controlled substance. The federal food and drug administration
35 recently approved this intravenous injectable anesthetic for

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1 use by or on the order of a licensed veterinarian. Alfaxalone
2 is not available by prescription and is approved for use in
3 veterinary practice.

4 The bill classifies suvorexant, a new insomnia treatment
5 approved by the federal food and drug administration, as a
6 schedule IV controlled substance.

7 The bill classifies eluxadoline, a new entity with central
8 nervous system opioid properties recently approved by the
9 federal food and drug administration for the treatment of
10 irritable bowel syndrome with diarrhea, as a schedule IV
11 controlled substance.

12 It is a class "C" felony pursuant to Code section
13 124.401(1)(c)(8) for any unauthorized person to violate a
14 provision of Code section 124.401 involving a classified
15 substance placed on schedule I, II, or III pursuant to the
16 bill. A class "C" felony for this particular offense is
17 punishable by confinement for no more than 10 years and a fine
18 of at least \$1,000 but not more than \$50,000.

19 It is an aggravated misdemeanor pursuant to Code section
20 124.401(1)(d) for any unauthorized person to violate a
21 provision of Code section 124.401 involving a classified
22 substance placed on schedule IV pursuant to the bill. An
23 aggravated misdemeanor is punishable by confinement for no more
24 than two years and a fine of at least \$625 but not more than
25 \$6,250.

26 If a person possesses a controlled substance in violation of
27 Code section 124.401(5) as a first offense, the person commits
28 a serious misdemeanor. A serious misdemeanor is punishable by
29 confinement for no more than one year and a fine of at least
30 \$315 but not more than \$1,875.

31 The bill takes effect upon enactment.

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Page 1

Not Reported in F.Supp., 1986 WL 4045 (S.D.Iowa)
(Cite as: Not Reported in F.Supp.)

H

Olsen v. State of Iowa
S.D.Iowa, 1986.

Only the Westlaw citation is currently available.

United States District Court, S.D. Iowa, Central
Division.

Carl Eric OLSEN and the Ethiopian Zion Coptic
Church, Plaintiffs,

v.

STATE OF IOWA, Defendant.
Civ. No. 83-301-E

March 19, 1986.

James R. Cook, Des Moines, Iowa, for plaintiffs.
Joseph P. Weeg, Asst. Atty. Gen., Des Moines,
Iowa, for defendant.

ORDER

DONALD E. O'BRIEN, District Judge.

*1 This matter is before the Court on defendant's resisted motion for summary judgment. A hearing was held on November 25, 1985. After careful consideration of the parties' briefs and arguments, this Court grants defendant's motion.

Plaintiff is a priest of the Ethiopian Zion Coptic Church. This religion uses marijuana as an integral part of its religious doctrine. *United States v. Rush*, 738 F.2d 497, 512 (1st Cir.1984), *cert. denied*, --- U.S. ---, 105 S.Ct. 1355 (1984). In 1978, plaintiff was convicted of possession of a controlled substance (marijuana) with intent to deliver in violation of Iowa Code Section 204.401(1) (1977). The Iowa Supreme Court reversed plaintiff's conviction on appeal. *State v. Olsen*, 293 N.W.2d 216 (Iowa), *cert. denied*, 449 U.S. 993 (1980). Olsen was retried, convicted, and appealed. The Iowa Supreme Court affirmed, finding that plaintiff's right to equal protection was not violated by the Iowa laws on marijuana usage. No. 171-69079 (July 18, 1984) at 3-4 (unreported opinion attached). On May 9, 1985, plaintiff filed

a Petition for Declaratory Judgment, claiming that the Iowa criminal statutes regarding controlled substances discriminated against his religious beliefs, thereby denying him equal protection of the laws.

The Iowa Supreme Court has already upheld the constitutionality of Iowa Code Section 204.401(1) against plaintiff's equal protection attack. *State v. Olsen*, *supra*, at 3-4. The federal declaratory judgment statute, 28 U.S.C. §§ 2201-2202 does not give this Court the power to review a state court decision. *Travelers Insurance Co. v. Davis*, 490 F.2d 536, 644 (3rd Cir.1974). Plaintiff cites *Peyote Way Church of God, Inc. v. Smith*, 742 F.2d 193 (5th Cir.1984), for the proposition that this Court can enter a declaratory judgment on the constitutionality of the Iowa controlled substance laws. However, the *Peyote Way* decision is distinguishable from the instant case because in the former, there was no prior state court decision involving the constitutionality of the criminal statute in the religious context.

Assuming for purposes of discussion that *Peyote Way* applies, the equal protection issue has already been decided adverse to plaintiff by another federal circuit. In *United States v. Rush*, 738 F.2d 497 (1st Cir.1984), *cert. denied*, --- U.S. ---, 105 S.Ct. 1355 (1984), the Court held that, "the Ethiopian Zion Coptic Church cannot be deemed similarly situated to the Native American Church for equal protection purposes." *Id.* at 513. In *Rush*, the Ethiopian Zion Coptic Church claimed it should be afforded a religious exemption from the marijuana laws on the same terms as the peyote exemption granted to the Native American Church. *Id.* The Court reasoned that the Native American Church's exemption was a product of congressional findings and legislative history underlying the American Indian Religions Freedom Act, and that the Ethiopian Zion Coptic Church had not received similar congressional dispensation for marijuana use. *Id.*

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*2 While this Court is not bound by another circuit's decision, the Eighth Circuit has recently spoken of the need for deference to other circuits: [a]lthough we are not bound by another circuit's decision, we adhere to the policy that a sister circuit's reasoned decision deserves great weight and precedential value. As an appellate court, we strive to maintain uniformity in the law among our circuits, wherever reasoned analysis will allow ... [t]his duty applies to the district courts in this circuit.

Keasler v. United States, 766 F.2d 1227, 1233 (8th Cir.1985), (footnote and citations omitted). Thus, even were this Court to consider granting plaintiff a declaratory judgment, such relief is foreclosed by the *Rush* decision.

Plaintiff's equal protection issue is also barred by collateral estoppel, or issue preclusion. "Under collateral estoppel, once a court has decided an issue of law or fact necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Montana v. United States*, 440 U.S. 147, 153 (1979). The Supreme Court faced a similar problem in *Allen v. McCurry*, 449 U.S. 90 (1980). In that case, plaintiff brought a § 1983 action against the officers who entered his home seizing evidence used against him in his state criminal trial. *Id.* at 91. The Court noted that 28 U.S.C. § 1738 requires federal courts to give preclusive effect to state court judgments whenever the courts of the state where the judgments were issued would do so. *Id.* at 96.

Justice Stewart's majority opinion held that as the state court had already decided the search and seizure issue, and because petitioner did not assert that the state court failed to provide him with a full and fair opportunity to litigate the issue, collateral estoppel barred relitigation in federal court on the same issue in a § 1983 action. *Id.* at 101. Justice Stewart wrote, "the Court's view of § 1983 in *Monroe* lends no strength to any argument that Congress intended to allow relitigation of federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous." *Id.*

Thus, the only issue remaining is whether the Iowa Supreme Court's order can be given collateral estoppel effect under the test announced in *In re Piper Aircraft Litigation*, 551 F.2d 213 (8th Cir.1977). Four elements must be satisfied under the collateral estoppel test:

(1) [T]he issue sought to be precluded must be the same as that involved in the prior action; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the prior judgment.

Id. at 218-219.

Applying the above elements to the facts of the instant case, this Court concludes that collateral estoppel effect must be given to the Iowa Supreme Court's judgment. Plaintiff here challenges the statute on equal protection grounds, which is the same issue decided by the Iowa Supreme Court. (see attached unreported opinion at 3-4). The issue was also actually litigated at the state level. The Iowa Supreme Court based its decision on testimony regarding the Church's indiscriminate use of marijuana, indicating that this issue was fully litigated. *Id.* at 4. The equal protection issue was also determined in a judgment by the Iowa Supreme Court, and plaintiff has failed to produce any reason why the decision should not be considered valid and final. Finally, the determination of the equal protection issue was essential to the prior judgment, for had the Iowa Supreme Court ruled otherwise, plaintiff's conviction would have been reversed.

*3 The above analysis demonstrates that collateral estoppel applies to bar litigation of the equal protection issue before this Court. These same principles also apply to plaintiff's first amendment issue, as the Iowa Supreme Court decided that aspect of plaintiff's claim in *State v. Olsen*, 315 N.W.2d 1, 7-9 (Iowa 1982). In that case, the court held that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." *Id.* at 9. Therefore, as the issues plaintiff seeks to litigate before this Court are barred by collateral estoppel, defendant's motion for summary judgment must be granted, and defendant's case dismissed.

Not Reported in F.Supp., 1986 WL 4045 (S.D.Iowa)
(Cite as: Not Reported in F.Supp.)

IT IS THEREFORE ORDERED that defendant's motion for summary judgment is hereby granted.

IT IS FURTHER ORDERED that plaintiff's petition for a declaratory judgment is hereby denied, and the case dismissed.

EXHIBIT "A"

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Appellee,

vs.

CARL ERIC OLSEN, Appellant.

Filed July 18, 1984

171

69079

Appeal from the Iowa District Court for Muscatine County, R.K. Stohr, Judge.

Defendant appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). AFFIRMED.

Carl Eric Olsen, Miami Beach, Florida, pro se.
James R. Cook of Cook & Waters, Des Moines, on the brief.

Thomas J. Miller, Attorney General, Joseph P. Weeg, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Wolle, JJ.

PER CURIAM.

Defendant, Carl Eric Olsen, appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). This case was before us in *State v. Olsen*, 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993, 101 S.Ct. 530, 66 L.Ed.2d 290 (1980), in which we reversed and remanded when a State's witness was permitted to testify beyond the scope of the minutes of testimony. Following his conviction on a second trial, defendant again appeals and we affirm.

Olsen admits that when stopped by the West Liberty police in May of 1978, he was transporting 129 pounds of marijuana and \$10,915 in cash. His sole defense is that his possession and use of the marijuana are protected by the first amendment's guarantee of religious freedom.

Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it. Testimony also revealed church members use marijuana continuously and publicly, commencing at an early age. Olsen admitted to smoking marijuana while driving and to using the drug a few hours before testifying in his second trial. Nonetheless, he asks us on this appeal to afford his religious use of marijuana unlimited constitutional protection.

I. This court dealt at length with Olsen's first amendment claim in *State v. Olsen*, 315 N.W.2d 1, 7-9 (Iowa 1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." In fact, since our last *Olsen* decision, we have been joined in our analysis by yet another court, see *Whyte v. United States*, 471 A.2d 1018 (D.C.1984).

*4 Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana. The cases do not support

Not Reported in F.Supp.

Page 4

Not Reported in F.Supp., 1986 WL 4045 (S.D.Iowa)
(Cite as: Not Reported in F.Supp.)

Olsen's assertion. See *Leary v. United States*, 383 F.2d 851, 860-61 (5th Cir.1967), *rev'd on other grounds*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969); *Whyte*, 471 A.2d at 1021; *State v. Rocheleau*, 142 Vt. 61, 68, 451 A.2d 1144, 1148 (1982).

II. Defendant also raises an equal protection challenge, based on the legislative exemption granted the peyote ceremonies of the Native American Church. See Iowa Code § 204.204(8) (1983). This statutory exemption may be derived from the California Supreme Court's decision in *People v. Woody*, 61 Cal.2d 716, 394 P.2d 813, 40 Cal.Rptr. 69 (1964). The *Woody* court noted in granting the prosecution exemption that peyote was used only in a desert enclosure and only during a special Saturday sundown to Sunday sunrise ceremony. The participants were fed breakfast at the close of the ceremony and were kept isolated from the general population until the drug's effects had dissipated. Defendant can point to no such safeguards in the Coptic Church's indiscriminate use of marijuana; the drug is smoked publicly and continuously and made available to church members regardless of age or occupation. These significant distinctions render meritless defendant's equal protection argument.

We affirm the judgment of the district court.

AFFIRMED.

S.D.Iowa, 1986.
Olsen v. State of Iowa
Not Reported in F.Supp., 1986 WL 4045 (S.D.Iowa)

END OF DOCUMENT

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

GEORGE McMAHON, BRYAN SCOTT and BARBARA DOUGLASS,	Case No. CV7415
Petitioners,	RULING ON PETITION FOR JUDICIAL REVIEW
CARL OLSEN,	FILED POLK COUNTY I.A. 2009 APR 21 PM 4:14 CLERK DISTRICT COURT
Intervenor,	
v.	
IOWA BOARD OF PHARMACY,	
Respondent.	

Introduction

The above-captioned matter came before the Court for hearing on March 27, 2009. Petitioners were represented by attorney Randall Wilson. Intervenor, Carl Olsen, was present on behalf of himself. Respondent was represented by attorney Scott Galenbeck. Following oral argument and upon review of the court file and applicable law, the Court enters the following:

Statement of the Case

Petitioners filed a petition with the Iowa Board of Pharmacy on June 24, 2008, seeking removal of marijuana from Schedule I of Iowa’s Controlled Substances Act. Petitioners argued that Iowa Code section 124.203 requires the Iowa Board of Pharmacy (hereinafter the “Board”) to recommend to the legislature that marijuana be rescheduled because it no longer meets the legislative criteria established for the listing of Schedule I substances. The Board issued a final decision denying Petitioners’ request on October 7, 2008. Petitioners have now appealed the Board’s decision in this action for judicial review, and argue that the Board’s decision is based upon an erroneous interpretation of law.

Standard of Review

On judicial review of agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code section 17A.19. *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985). The Court shall reverse, modify, or grant other appropriate relief from agency action if such action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. IOWA CODE § 17A.19(10)(c). The Court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. IOWA CODE § 17A.19(11)(b). Appropriate deference is given to an agency's interpretation of law when the contrary is true, although "the meaning of any statute is always a matter of law to be determined by the court." *Birchansky Real Estate, L.C. v. Iowa Dept of Public Health*, 737 N.W.2d 134, 138 (Iowa 2007); IOWA CODE § 17A.19(11)(c). The agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981).

Analysis

Marijuana is identified in the Iowa Controlled Substances Act as a Schedule I controlled substance. *See* IOWA CODE § 124.204 (2009). Section 124.203 of the Iowa Code sets forth the criteria for classifying controlled substances under Schedule I. Section 124.203 provides:

The board shall recommend to the general assembly that it place in schedule I any substance not already included therein if the board finds that the substance:

1. Has high potential for abuse, and
2. Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

IOWA CODE § 124.203. This section further provides that the Board “shall recommend” that the general assembly place a listed Schedule I substance in a different schedule or remove it if it does not meet the previously mentioned criteria. *Id.*

Petitioners argued before the Board that marijuana no longer meets the criteria for classification as a Schedule I controlled substance because marijuana now has accepted medical use in treatment in the United States. In support of their argument, Petitioners cited to the laws of other states that have now authorized the use of marijuana for medicinal purposes. The Board addressed Petitioners’ argument and request for reclassification in its final order by explaining:

While neither accepting or rejecting Olsen’s assertion that the medicinal value of marijuana is established by legislation adopted in other states, the Board notes that before recommending to the Iowa legislature that marijuana be moved from schedule I to schedule II, the Board would also need to make a finding that marijuana lacks a high potential for abuse. *See* Iowa Code 124.203 (2007). There exists no basis for such a finding in the record before the Board, as Olsen’s submission offers no evidence or information on marijuana’s potential for abuse. Absent such evidence or information, Olsen’s request must be denied.

(Order, p. 2).

Section 124.203 of the Iowa Code requires that any controlled substance have (1) a high potential for abuse, *and* (2) no accepted medical use in treatment in the United States before it may be classified under Schedule I. Because the Code imposes both criteria as a prerequisite to Schedule I classification, the failure to meet either would require recommendation to the legislature for removal or rescheduling. *See id.* As such, the Board’s statement that it “would also need to make a finding that marijuana lacks a high potential for abuse” before it could recommend to the legislature that marijuana be moved from Schedule I to Schedule II is based upon an erroneous interpretation of law.¹

¹¹ Pursuant to Iowa Code section 124.205, Schedule II substances must be found to have “currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions,” in order to be classified as such. *See* IOWA CODE § 124.205. Controlled substances must also be found to have a “high

The Board now argues in this action for judicial review that its decision should be affirmed by this Court because Petitioners failed to make an adequate record before the agency. The Board asserts that Petitioners failed to present evidence addressing all of the factors delineated in Iowa Code section 124.201. However, this is not the Board's stated reason for its decision in its written order. The Court may not rely on the Board's post hoc rationalizations for purposes of affirming the agency action at issue. Petitioners were entitled to a written explanation of the reasons for the Board's decision regardless of whether the agency action at issue was taken in response to a request for the adoption of agency rules, taken in response to a request for a declaratory order, or taken in a contested case proceeding. *See* IOWA CODE §§ 17A.7(1), 17A(4)(d), 17A.16; *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981). The Court acknowledges that the factors set forth in Iowa Code section 124.201 are relevant in the Board's determination of whether the statutory criteria for Schedule I classification are satisfied.² However, Iowa Code section 124.203 clearly requires that the Board recommend removal of marijuana from Schedule I or reclassification under a different schedule if it is found that marijuana “[h]as no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision.” If the Board believes that the evidence presented by Petitioners was insufficient to support such a finding, it should have so stated in its order. Remand of the Board's decision is required so that Board may address Petitioners'

potential for abuse” before they may be classified under Schedule II. *Id.* As such, one of the main characteristics that distinguishes Schedule II substances from those listed in Schedule I is accepted medical use in treatment in the United States. It is therefore erroneous to state that a substance classified under Schedule I cannot be reclassified as a Schedule II substance if the substance is found to present a high potential for abuse. Both Schedule I and Schedule II controlled substances share the same characteristic of having a high potential for abuse. 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.

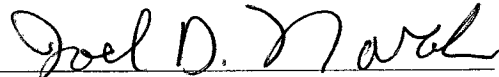
² Iowa Code section 124.201 requires that the Board consider these factors before making a rescheduling recommendation to the legislature. The Board is apparently of the position that these factors must also be considered before recommending rescheduling or removal pursuant to the terms of Iowa Code section 124.203.

Petition through proper application of the law. The Board must determine whether the evidence presented by Petitioner is sufficient to support a finding that marijuana has accepted medical use in the United States and does not lack accepted safety for use in treatment under medical supervision.

ORDER

IT IS THE ORDER OF THE COURT that the Ruling on Appeal of the Iowa Board of Pharmacy is hereby **REMANDED**.

SO ORDERED this 21 day of April, 2009.



JOEL D. NOVAK, District Judge
Fifth Judicial District of Iowa

Original Filed.

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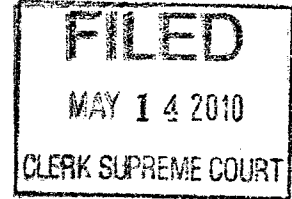
Carl Olsen
130 E. Aurora Ave.
Des Moines, IA 50313
INTERVENOR

IN THE SUPREME COURT OF IOWA

No. 09-1789

Polk County No. CVCV007415

O R D E R



**GEORGE MCMAHON and
BARBARA DOUGLASS,
Petitioners-Appellants,**

and

**CARL OLSEN,
Intervenor-Appellant,**

vs.

**THE IOWA BOARD OF
PHARMACY,
Respondent-Appellee.**

This matter comes before the court, Cady, Appel, and Baker, JJ., upon petitioners' motion to vacate judgment and remand to the district court with instructions. The intervenor has filed an objection to the motion to vacate judgment and a supplement to the objection. The respondent, the Iowa Board of Pharmacy, has filed a resistance to the motion to vacate judgment. The board's resistance includes a request to dismiss this appeal as moot. The intervenor has filed a resistance to the board's request. The petitioners have filed a reply to the board's request.

The petitioners and the intervenor are appealing from the district court's ruling denying them additional judicial review of the pharmacy board's denial of their requests to recommend marijuana's reclassification as a controlled substance under Iowa Code chapter 124. On February 17, 2010, while this appeal was pending, the pharmacy board recommended that the legislature reclassify the scheduling of marijuana as a controlled substance under Iowa Code chapter 124

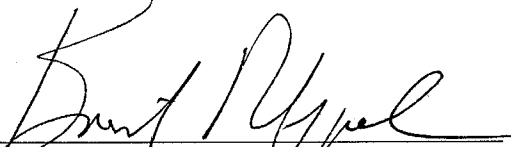
(2009). The board ultimately made the reclassification recommendation sought by the petitioners and the intervenor. This reclassification decision ended any justiciable existing controversy that an appellate decision on this case could affect. See *Grinnell College v. Osborn*, 751 N.W.2d 396, 398-399 (Iowa 2008) (need for existing controversy to justify an appeal). The appeal brought by the petitioners and the intervenor is moot.

This court agrees with the board that the proper disposition of a moot appeal before this court is dismissal. *Martin-Trigona v. Baxter*, 435 N.W.2d 744, 745-46 (Iowa 1989). Accordingly, it is ordered:

1. The petitioners' motion to vacate judgment is denied.
2. The respondent board's request to dismiss is granted. The appeal by petitioners and the intervenor is dismissed as moot.

Dated this 14th day of May, 2010.

THE SUPREME COURT OF IOWA



Brent R. Appel, Justice

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Polk County Courthouse
L O C A L

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,
Petitioner,

vs.

IOWA BOARD OF PHARMACY
(99AG27588),
Respondent.

CASE NO. CV 8156

RULING ON RESPONDENT'S MOTION
TO DISMISS

This matter came before the court on June 11, 2010, for hearing on respondent's motion to dismiss. Present were Assistant Attorney General Scott Galenbeck for respondent and petitioner (who appeared pro se) as well as Mr. George McMahon who seeks to intervene in this matter. Having heard the arguments of the parties, having reviewed the court file, and being otherwise fully advised in the premises, the court now enters its ruling.

STATEMENT OF MATERIAL FACTS

On February 17, 2010, respondent Iowa Board of Pharmacy (Board) issued a resolution to the state legislature, which recommended marijuana be reclassified from a Schedule I substance to a Schedule II substance. This reclassification, if adopted by the state legislature, would allow marijuana to be regulated and used for medicinal purposes.

The Board utilized several hearings to gather information on marijuana and its possible medical benefits. A total of four hearings were held between August and November of 2009 in Des Moines, Mason City, Iowa City and Council Bluffs. At these hearings, the Board listened to

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testimony from medical practitioners, law enforcement personnel and concerned citizens. The hearings were open to the public and anyone could attend and issue either a written statement or give oral testimony. The Board then used the information gathered at these hearings to inform their discussion of the topic during a Board meeting on February 17, 2010. It was this discussion which ultimately resulted in the Board recommending the state legislature reschedule marijuana from a Schedule I substance to a Schedule II substance. The Board did not supply any formal findings of fact or law in their recommendation to the state legislature.

Petitioner filed a Petition for Writ of Mandamus in an attempt to compel the Board to issue a written statement of their findings of fact and law. The Board has filed a motion to dismiss for failure to state a claim on which relief can be granted. Iowa R. Civil P. 1.421(f) and 1.431.

DISCUSSION

Petitioner asserts this matter was a contested case and the Board is bound by law to issue findings of fact and law pursuant to the hearings and meeting they held to discuss the rescheduling of marijuana. Iowa Code § 17A.16 (2009). This section of the Iowa Code does require a statement of the Board's findings of fact and law. However, the statute only applies to "contested cases."

Under the Administrative Procedure Act, a "contested case" is defined as a proceeding "in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing," and a party whose rights are being determined based upon individualized particular facts and circumstances is entitled to an adversarial hearing with the presentation of evidence and arguments and the

opportunity to cross-examine witnesses and introduce rebuttal evidence; on the other hand, “other agency action” is a residual category, which includes agency actions that do not fall within the rulemaking or contested case categories. I.C.A. § 17A.2(5), *Strickland v. Iowa Bd. Of Med.*, 764 N.W.2d 559 (Iowa App. 2009).

This definition of a contested case essentially means, in order for the Board to be required by law to issue findings of fact and law, the proceeding in question must be a contested case. In order for a proceeding before the Board to be considered a contested case under Iowa law, a party’s rights must be the issue in question and evidentiary hearings must have been conducted. *Strickland*, 764 N.W.2d 559. Thus, in order for the Board to be required by law to issue findings of fact and law, a party’s rights must be at risk and the four hearings and one meeting that were held regarding the subject of medicinal marijuana must be considered evidentiary hearings.

Under Iowa law, individuals whose rights are being determined by a state governmental agency are entitled to an “adversarial hearing with the presentation of evidence, arguments and the opportunity to cross-examine witnesses.” *Id.* This did not happen in the instant case. It seems the Board held a series of information-gathering town hall meetings which the general public was welcome to attend. There were no opening and closing arguments and there was no opportunity to cross-examine witnesses.

The Board’s February 17, 2010 meeting does not qualify as an evidentiary hearing. The Board simply discussed the information gathered at the previous meetings. No witnesses were called and no opening and closing statements by aggrieved parties were given.

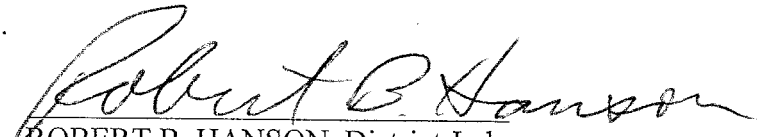
It is this Court’s determination that no evidentiary hearings were held on the subject of medicinal marijuana. Quite simply, if no adversarial evidentiary hearings were held, then this

matter cannot be considered a contested case under Iowa law. The Board's activities concerning the subject of medicinal marijuana are properly classified as "other agency action."

Consequently, petitioner's only recourse is to seek judicial review. Iowa Code § 17A.19 (2009).

IT IS THEREFORE ORDERED that respondent's motion to dismiss is **GRANTED**. All other pending motions are **DENIED** as moot.

Dated this 23rd day of August, 2010.


ROBERT B. HANSON, District Judge
Fifth Judicial District of Iowa

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Administrative Law Division
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Des Moines, Iowa 50319
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Carl Olsen
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PETITIONER

Lloyd Jessen
Executive Director
Iowa Board of Pharmacy Examiner
RESPONDENT

8-23-10
George McMahon
902 4th Street
Livermore, IA 50558
INTERVENOR

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

CARL OLSEN, LADD HUFFMAN,	:	
ALAN KOSLOW, and ROBERT	:	
MANKE,	:	
Petitioners,	:	NO. CV8682
vs.	:	RULING
STATE OF IOWA,	:	
Respondent.	:___	

BE IT REMEMBERED, on this 23rd day of September, 2011 the above matter came before the undersigned, Judge of the Fifth Judicial District of Iowa, on the Defendant's Motion to Dismiss. The Petitioners, Carl Olsen and Robert Manke, appeared personally, pro se. The Respondent appeared by Assistant Attorney General Scott A. Galenbeck. The Court has reviewed the file and considered the arguments of the litigants and issues the following Ruling.

The Petition for Declaratory Judgment filed herein seeks a determination that marijuana has accepted medical use in treatment in the United States as a matter of law, and that classification of marijuana as a Schedule I controlled substance within the meaning of Iowa Code Chapter 124 is no longer valid because of that accepted medical use. In seeking dismissal of the Petition Respondent urges that the relief requested in the Petition is not an appropriate controversy for a declaratory judgment proceeding. In addition, Respondent argues that for the Court to rule on the Petition would constitute improper judicial legislation in violation of the separation of powers doctrine. Finally, Respondent argues that the issue has previously been adjudicated in other litigation involving the same parties.

A motion to dismiss must generally fail or succeed based solely on matters alleged in the petition.¹ Such a motion admits the well-pleaded facts for the purpose of testing whether they are legally sufficient to state a claim upon which relief may be granted as a matter of law.² In ruling on a motion to dismiss all reasonable inferences which may be drawn from the petition must be viewed in a light most favorable to the plaintiff.³ All of the foregoing principles are applicable to motions to dismiss filed in declaratory judgment proceedings.⁴

Declaratory judgment actions are designed to declare the rights, status, or other legal relationships of the parties.⁵ “The purpose of the declaratory judgment is to resolve uncertainties and controversies before obligations are repudiated, rights are invaded, or wrongs are committed.”⁶

Rules related to declaratory judgments are to be applied liberally.⁷ Notwithstanding the liberal approach, however, a justiciable controversy, as opposed to simply an abstract question, must exist.⁸ Unfortunately, that distinction is often difficult to make. “The basic question is said to be whether the facts alleged show there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment”.⁹ “There must be sufficient facts pleaded to show that the issue is concrete and that particular legal rights and powers will be or are affected.”¹⁰

¹ *Reidiger v. Marrland Development Corp.*, 253 N.W.2d 915, 916 (Iowa 1977).

² *Berger v. General United Group, Inc.*, 268 N.W.2d 630, 634 (Iowa 1978).

³ *Wright v. Thompson*, 254 Iowa 342, 117 N.W.2d 520, 523 (1962).

⁴ *Hartford Accident & Indemnity Co. v. O'Connor-Regenwether Post No. 3633, Veterans of Foreign Wars*, 247 Iowa 168, 173, 73 N.W.2d 12, 14 (1955).

⁵ Iowa R. Civ. P. 1.1101.

⁶ *Dubuque Policeman's Protective Assn. v. City of Dubuque*, 553 N.W.2d 603, 607 (Iowa 1996), quoting 22 Am.Jur.2d Declaratory Judgments §1, at 670 (1988).

⁷ *Gradisching v. Polk County, Iowa*, 164 N.W.2d 104 (Iowa).

⁸ *McCarl v. Fernberg*, 256 Iowa 93, 126 N.W.2d 427 (1964).

⁹ *Katz Investment Co. v. Lynch*, 242 Iowa 640, 648, 47 N.W.2d 800, 805 (1951).

¹⁰ *Bechtel v. City of Des Moines*, 225 N.W.2d 326, 331 (Iowa 1975).

As noted by the court in *Grains of Iowa L.C. v. Iowa Department of Agriculture and Land Stewardship*¹¹, in determining a case was not “justiciable”,

“[w]e conclude this case is not adjudicable or fully ripened for it seeks to determine abstract questions not resting upon existing or determinable facts or rights. In many respects it is ‘advisory’, for the judgment sought would not constitute specific relief to a litigant or effect legal relations, nor would the judgment be sufficiently conclusive. This controversy does not involve an actual, genuine, live controversy, nor does it affect existing legal relations”.

Pursuant to the provisions of Iowa R. Civ. P. 1.1105, “the court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding”. Sustaining a Motion to Dismiss in reliance upon this provision, however, is generally inappropriate, as it is typically necessary to consider the evidence presented at trial before making such a determination.¹²

Iowa’s statutory scheme related to controlled substances classifies substances into one of five different schedules. Schedule I controlled substances, by definition, have a high potential for abuse and “no accepted medical use in treatment in the United States”.¹³ Schedule II controlled substances, by definition, have high potential for abuse, “currently accepted medical use in treatment in the United States”, and abuse of the substance may lead to severe psychic or physical dependence.¹⁴

By statute, the Iowa Board of Pharmacy Examiners generally makes “recommendations” to the general assembly as to the placement of substances on particular schedules. The Code directs the Board to make recommendations for placement on a particular schedule if it is not already on that schedule, and also directs

¹¹ 562 N.W.2d 441, 446 (Iowa 1997)

¹² *Ewurs v. Irving*, 344 N.W.2d 273, 276 (Iowa App. 1983).

¹³ Iowa Code §124.203(1).

¹⁴ Iowa Code §124.205.

the Board to recommend removal or reclassification of a substance if the Board does not believe a substance fits the criteria for the schedule it is on.¹⁵

Both parties recognize that Iowa's statutory scheme generally vests the decision-making determination as to schedule assignment to the general assembly. The Board of Pharmacy Examiners is generally limited to making recommendations, which the general assembly may then choose to accept or reject.

While most controlled substances appear on a single schedule, marijuana is identified as both a schedule I and a schedule II controlled substance. Iowa Code §124.204(3)(m) lists marijuana as a schedule I controlled substance "except as otherwise provided by rules of the board for medicinal purposes". Iowa Code §124.206(7)(a) identifies marijuana as a schedule II controlled substance "when used for medicinal purposes pursuant to rules of the board."

Thus, in the case of marijuana, the Iowa legislature has legislatively determined that the Iowa Board of Pharmacy may promulgate rules providing for the use of marijuana for medicinal purposes. Marijuana is ordinarily a schedule I controlled substance "except as otherwise provided by rules of the board for medicinal purposes", in which case it is a schedule II controlled substance "when used for medicinal purposes pursuant to rules of the board".¹⁶

As noted by the Iowa Supreme Court in *State v. Bonjour*¹⁷, "the legislature has recognized that marijuana may have medical value. . . . These statutes [Iowa Code §§124.204(4)(m) & 124,206(7)(a)] show that our legislature has foreseen the potential

¹⁵ Compare Iowa Code §124.203(1) and Iowa Code §124.203(2).

¹⁶ Petitioner argues it is inconsistent for marijuana to be listed on both Schedule I and Schedule II. While there is inconsistency with the general definition between the two schedules, the legislature has specifically qualified its inclusion of marijuana on both schedules. Specific statutory provisions generally prevail over general provisions. See, Iowa Code §4.7.

¹⁷ 694 N.W.2d 511, 513 (Iowa 2005)

medical uses for marijuana but has deferred on the issue until the Board of Pharmacy Examiners has acted.”

On February 17, 2010 the Iowa Board of Pharmacy Examiners recommended to the legislature that marijuana be reclassified as a controlled substance under Iowa Code Chapter 124. Implicit in that recommendation was a determination by the Board that marijuana has potential use for medical purposes.

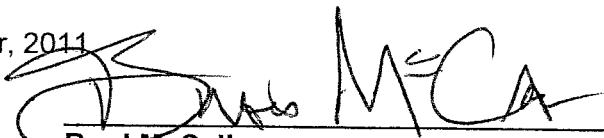
When the instant declaratory judgment proceeding is viewed in the context of the existing statutory scheme, the pronouncements of the Iowa Supreme Court in *Bonjour*, and the Iowa Board of Pharmacy Examiners recommendations to the legislature, it is apparent that the questions posed are merely abstract in nature and do not constitute a justiciable controversy. There is already acknowledgement by the courts and by the legislature as to the potential medical uses for marijuana. Marijuana is already classified as a schedule II controlled substance “when used for medicinal purposes pursuant to rules of the board”. There is insufficient real and immediate controversy between the parties to warrant a declaratory judgment.

Furthermore, although it is typically not appropriate to sustain a Motion to Dismiss based upon the provisions of Iowa R. Civ. P. 1.1105, it is apparent from the face of the Petition, read in conjunction with the clear provisions of Chapter 124, that rendering a declaratory ruling on the questions posed would not “terminate the uncertainty or controversy giving rise to the proceeding”.

For the foregoing reasons, the Motion to Dismiss must be granted.

IT IS THEREFORE ORDERED that the Motion to Dismiss is granted. The above matter is hereby dismissed, with costs assessed against the Petitioners.

Dated this 11 day of October, 2011


Brad McCall
Judge – Fifth Judicial District

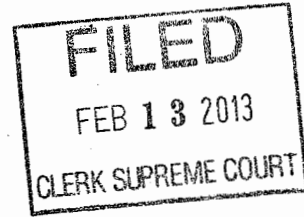
Original Filed

Copies to: Carl Olsen
Ladd Huffman
Alan Koslow
Robert Manke
Scott A. Galenbeck, Attorney for Respondent

IN THE COURT OF APPEALS OF IOWA

No. 3-015 / 11-1744
Filed February 13, 2013

**CARL OLSEN, LADD HUFFMAN, ALAN
KOSLOW, and ROBERT MANKE,**
Applicant-Appellants,



vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Bradley M. McCall,
Judge.

Carl Olsen appeals from the dismissal of his motion for declaratory judgment. The other pro se plaintiffs: Ladd Huffman, Alan Koslow, and Robert Manke, did not file appeal briefs and their appeals are dismissed. **AFFIRMED AS TO OLSEN; APPEALS OF HUFFMAN, KOSLOW, AND MANKE DISMISSED.**

Carl Eric Olsen, Des Moines, appellant pro se.

Thomas J. Miller, Attorney General, Scott M. Galenbeck, Assistant Attorney General, and John Sarcone, County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Carl Eric Olsen, Ladd Huffman, Alan Koslow, and Robert Manke appeal from the dismissal of their petition for declaratory judgment. We affirm as to Eric Olsen's claims, finding the district court correctly granted the State's motion to dismiss, and dismiss the appeals of Ladd Huffman, Alan Koslow, and Robert Manke who did not file a brief on appeal.

I. Facts and Proceedings

Carl Olsen filed a petition for declaratory judgment requesting the court rule as a matter of law "marijuana no longer meets the statutory criteria for inclusion in schedule I" as defined under Iowa Code section 124.203 (2011). Ladd Huffman, Robert Manke, and Alan Koslow joined in his petition. The State filed a motion to dismiss the petition. It argued the relief requested was not an appropriate controversy for a declaratory judgment proceeding, and a ruling on the subject would violate the separation of powers doctrine. Olsen resisted the motion. A hearing was held September 23, 2011. At the hearing, the State also argued the issue raised in the petition had already been ruled upon in Olsen's prior related litigation with the Iowa Board of Pharmacy. Olsen and Manke also presented their arguments to the court.

The district court granted the State's motion to dismiss. The court wrote:

Both parties recognize that Iowa's statutory scheme generally vests the decision-making determination as to schedule assignment [of controlled substances] to the general assembly. The Board of Pharmacy Examiners is generally limited to making recommendations, which the general assembly may then choose to accept or reject. While most controlled substances appear on a single schedule, marijuana is identified as both a schedule I and a schedule II controlled substance. Iowa Code section 124.204(3)(m) lists marijuana as a schedule I controlled substance "except as

otherwise provided by rules of the board for medicinal purposes.” . . . Thus, in the case of marijuana, the Iowa legislature has legislatively determined that the Iowa Board of Pharmacy may promulgate rules providing for the use of marijuana for medical purposes. . . .

When the instant declaratory judgment proceeding is viewed in the context of the existing statutory scheme . . . it is apparent that the questions posed are merely abstract in nature and do not constitute a justiciable controversy.

Olsen filed a notice of appeal and an appeal brief purporting to be on behalf of himself, Huffman, Koslow, and Manke.¹

II. Analysis

“Because our supreme court intended to prohibit people who are not licensed as attorneys from practicing law, an attempt to do so is unauthorized.” *Yulin Li ex rel. Lee v. Rizzio*, 801 N.W.2d 351, 359 (Iowa Ct. App. 2011). An individual who is not licensed as an attorney engages in the practice of law by exercising professional judgment and representing others before the courts. *Id.*

Olsen is not a licensed attorney in the State of Iowa. He proceeded through this litigation pro se. “Although our state law allows pro se litigants to represent their *own* claims, it does not authorize pro se litigants to prosecute the claims of *others*. Lay people cannot be said to engage in pro se representation—representing themselves—when they advocate the claims of another.” *Rizzio*, 801 N.W.2d at 360. Olsen filed his notice of appeal, brief, and related documents on behalf of those who joined in his petition for declaratory judgment. In doing so, he was preparing legal instruments by which the rights of

¹ “Even though neither party has questioned our jurisdiction to hear and decide this case, we will sua sponte dismiss an appeal that is neither authorized by our rules nor permitted by court order.” *River Excursions, Inc. v. City of Davenport*, 359 N.W.2d 475, 477 (Iowa 1984); Iowa R. Civ. P. 37.2 (describing the unauthorized practice of law).

his co-plaintiffs could be obtained. Regarding Huffman, Koslow, and Manke, he was engaged in the unauthorized practice of law.

The proper remedy for his unauthorized practice of law on appeal is for us to dismiss the appeals of Huffman, Koslow, and Manke. *Id.* at 363 (dismissing litigation where father represented son pro se); *see also Bergantzel*, 619 N.W.2d at 318 (holding because negotiation of a settlement constituted the unauthorized practice of law, the contract obligating performance was unenforceable). We therefore solely proceed to the merits of the claim with regard to Olsen.

As to the merits of the appeal with regard to Olsen, we agree with the district court's well-reasoned analysis. The court thoroughly addressed the issues now presented before us on appeal, and we find additional discussion is unnecessary. We affirm without further opinion pursuant to Iowa Rule of Appellate Procedure 6.1203(a) and (d).

**AFFIRMED AS TO OLSEN; APPEALS OF HUFFMAN, KOSLOW, AND
MANKE DISMISSED.**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,

Petitioner,

vs.

IOWA BOARD OF PHARMACY,

Respondent.

CASE NO. CVCV045505

**RULING AND ORDER ON PETITION
FOR JUDICIAL REVIEW**

This matter came before the Court upon the Petition for Judicial Review filed by the Petitioner, Carl Olsen. Although the Petitioner filed his petition pro se he has subsequently been represented by his counsel, Mr. Colin C. Murphy. The Iowa Board of Pharmacy is represented by Iowa Assistant Attorney General, Ms. Meghan Gavin. The Court, having reviewed the Petition, the briefs and the entire court file and otherwise being duly advised in the premises makes the following findings and order:

FACTS AND PROCEDURE

The Petition for Judicial Review was filed by the Petitioner on April 3, 2013 seeking judicial review of the Iowa Board of Pharmacy's action take on January 16, 2013, which denied the Petitioner's Petition for Agency action. The Petitioner had requested that the Iowa Board of Pharmacy recommend to the Iowa General Assembly that the drug marijuana be reclassified. That Petition apparently included supporting documents as alluded to in Petition for Judicial Review. The Iowa Board of Pharmacy considered the Petition and supporting documentation at

its bimonthly meeting on November 8 and 9, 2012. The board voted to deny the Petition. The Board further stated in its ruling that it recognized pursuant to Section 124.201(1), the Code of Iowa, that the Board is required within 30 days after the convening of each regular session of the General Assembly to 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. The Board went on to state the following in its ruling:

The Board recommended the reclassification of marijuana in 2010. The General Assembly took no action on the Board's recommendation at that time. On January 16, 2013, the Board concluded that the supporting documentation did not contain sufficient, new scientific information to warrant recommending the reclassification of marijuana this year.

(Ruling on Petition for Agency Action, January 16, 2013).

The Respondent filed a motion to dismiss this action on April 22, 2013. In the Respondent's Motion to Dismiss the Petition for Judicial Review, the Iowa Board of Pharmacy stated that while it has the duty to make recommendations and such duty is mandatory, the substance of those recommendations is left to the Board's discretion. Further, the Iowa Board of Pharmacy stated in its Motion to Dismiss that even if the Board had recommended the reclassification of marijuana in January as requested, there is no evidence this action would have yielded any substantive change. The Respondent further stated in their Motion to Dismiss that two reclassification bills were already introduced in the current legislative session and that both bills failed. Further, the Respondent states that at best the only relief that the Petitioner could be entitled to under his petition, assuming he would prevail, would be an order from this Court

remanding his Petition to the Board for reconsideration and a more extensive explanation of its decision. The Iowa Board of Pharmacy stated that a remand would be too late as the legislative session had ended and, therefore, the petition is moot and should be dismissed.

Petitioner's resistance to the Motion to Dismiss Petition for Judicial Review stated that mootness does not apply in this matter because the challenged action by the Iowa Board of Pharmacy is capable of repetition, yet evading review. The Petitioner stated that the Petitioner filed a Petition with the Board on August 3, 2012, and the Board failed to consider the Petition and render a decision until January 16, 2013, two days after the start of the legislative session. The Petitioner further alleged that these delays "make it virtually impossible for Petitioner to obtain complete judicial review of the controversies before the end of the session on May 3, 2013." (Petitioner's Resistance to Motion to Dismiss Petition for Judicial Review, April 29, 2013, page 2). The Petitioner went on to state that even assuming that the controversy here is rendered moot by the Board's delay, that the public interest exception to the mootness doctrine requires the district court to consider the Petition for Judicial Review. Further, that because Iowa law provides for annual recommendations from the Iowa Board of Pharmacy, there is a strong likelihood of future recurrence of this same problem.

This Court denied the motion to dismiss on October 23, 2013. Later, on December 24, 2013 the Petitioner moved for leave to amend its Petition for judicial review which was granted on January 6, 2014.

APPLICABLE LAW

On judicial review of an agency action, the District Court functions in an appellate capacity. *Greater Community Hospital v. Public Employment Relations Board*, 553 N.W.2d 869, 871 (Iowa 1996). Judicial review of a final agency action is governed by application of standards set out in Iowa Code § 17A.19. The District Court’s review is limited to corrections of errors of law and is not *de novo*. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995).

“The Court may affirm the agency action or remand to the agency for further proceedings.” Iowa Code § 17A.19(10). “The Court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced” for any of the fourteen grounds listed under Iowa Code 17A.19(10).

Specifically, the Court may reverse, modify or grant appropriate relief, when the agency determination of fact clearly vested in the discretion of the agency is not supported by substantial evidence in the record. Iowa Code § 17A.19(10)(f). The Court must view the record as a whole when determining whether the agency’s finding is based on substantial evidence. Iowa Code § 17A.19(10)(f). In viewing the record as a whole, the Court must consider any determination of veracity made by the agency fact finder, who personally observed the demeanor of the witnesses, and the agency’s explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3). In deciding whether substantial evidence exists, the Court must consider the “quantity and quality of evidence that would be deemed sufficient by a neutral,

detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1). The substantial evidence standard only applies to factual findings. Iowa Code § 17A.19(10)(f).

Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the Court must give appropriate deference to the agency’s findings. *Freeland v. Emp. Appeal Bd.*, 492 N.W.2d 193, 197 (Iowa 1992). “The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made.” *Munson v. Iowa Dep’t of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency’s decision is not supported by substantial evidence. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996).

Moreover, the Court shall reverse, modify or grant appropriate relief, if it determines based upon the record as a whole the agency applied or interpreted a provision of the law irrationally, illogically or wholly unjustifiably. Iowa Code § 17A.19(10)(l) & (m). The Court shall also reverse, modify or grant appropriate relief, if the agency action is “based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.” Iowa Code 17A.19(10)(c). If there is nothing in the Iowa Code showing the legislature delegated any special powers to the agency regarding the statutory interpretation of the area of law in question, the court “need not give the agency any deference regarding” the interpretation of the statute in question. Iowa Code § 17A.19(10)(c); See, *Mycogen Seeds v. Sands*,

668 N.W.2d 457, 464 (Iowa 2004). However, in areas of the agency's expertise an agency's determination of a question of law is given careful consideration. *Id.* On the contrary, "the final interpretation and construction of pertinent statutes" is reserved for the reviewing court. *Brown v. Star Seeds, Inc.*, 614 N.W.2d 577, 579 (Iowa 2000)(quoting *Second Injury Fund v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990)). "In deciding whether there has been a clear delegation of discretion" to the agency regarding interpretation of the area of law in question, the Court may consider "the following comments concerning the meaning of 'clearly' as used in section 17A.19(10):"

[The word "clearly"] means that the reviewing court, using its own independent judgment and without any required deference to the agency's view, must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question.

Mosher v. Dept. of Inspections and Appeals, 671 N.W.2d 501, 509 (Iowa 2003) (quoting Arthur E. Bonfield, Amendments to Iowa Administrative Procedure Act, *Report on Selected Provisions of Iowa State Bar Association and Iowa State Government* 63 (1998)).

Finally, the Court shall reverse, modify or grant appropriate relief to a petitioner, if the agency's decision was unreasonable, arbitrary, capricious or an abuse of discretion. Iowa Code § 17A.19(10)(n). An agency's action is "arbitrary" or "capricious" when the agency acts "without regard to the law or facts of the case." *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998)(citation omitted). "An agency action is 'unreasonable' when it is 'clearly against reason and evidence.'" *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-89 (Iowa 1994)(quoting *Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986). "An abuse of

discretion occurs when the agency action ‘rests on grounds or reasons clearly untenable or unreasonable.’” *Dico, Inc.*, 576 N.W.2d at 355 (quoting *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)).

ANALYSIS

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.

The Iowa Board of Pharmacy’s duty under Section 124.203 of the Code of Iowa is that the Board shall recommend to the General Assembly that it place a substance in Schedule I that is not already included therein if 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 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.

Section 124.203, the Code of Iowa.

In the Petition for Judicial Review, the Petitioner alleges that the Iowa Board of Pharmacy in its ruling went beyond the authority delegated the Agency by any provision of law;

made a decision based on the erroneous interpretation of law whose interpretation has been clearly vested by a provision of law in the discretion of the agency; took action without following the prescribed decision-making process; that the ruling was the product of a decision-making process which the agency did not consider relevant and an important matter relating to the propriety or desirability of the action in question that a rationale decision-maker in similar circumstances would have considered prior to taking that action; and the action of the agency is otherwise arbitrary, capricious or an abuse of discretion.

The Court agrees with the Iowa Board of Pharmacy's first argument, as stated in its brief, that the record is insufficient for this Court to determine if there is substantial evidence to support the agency action. Without a record the Court cannot adjudicate the Petitioner's claim that the action of the agency was done without substantial evidence. *Smith v. Iowa Bd. Of Medical Examiners*, 729 N.W.2d 822,827 (Iowa 2007).

The Court also finds that the Board of Pharmacy did not fail do perform its duty under Sec. 124.203, The Code of Iowa. The Board did in fact make its recommendations to the General Assembly that marijuana not be reclassified specifically finding that:

the supporting documentation did not contain sufficient, new scientific information to warrant recommending the reclassification of marijuana this year.

(Ruling on Petition for Agency Action, January 16, 2013).

Although the agency, in this case, the Board of Pharmacy, did not outline in detail the "supporting documentation" for its recommendation, this does not make such agency action

irrational, illogical or wholly unjustifiable. Neither does it make such action arbitrary, capricious or unreasonable. The Court cannot review that which is not there. The “supporting documentation” was not set forth nor did the Petitioner provide any evidence from which the court could make a finding that the agency was in error. The Petitioner had some duty to present to the reviewing court a record from which a determination could be made that the agency action be reversed, affirmed or remanded as allowed by the statutes. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 4 (Iowa 2005). Since no sufficient record exists the Court can make no determination that the Petitioner’s claims are viable and require the relief he is seeking. Therefore, the Court must affirm then agency decision.

Costs are taxed to the Petitioner.

Dated this 18th day of February 2014.

SCOTT D. ROSENBERG
Judge, 5th Judicial District of Iowa

Copies to:
All parties



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV045505
Case Title CARL OLSEN V. IOWA BOARD OF PHARMACY

So Ordered

A handwritten signature in cursive script that reads "Scott D. Rosenberg".

**Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa**

Electronically signed on 2014-02-18 08:07:53 page 10 of 10

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

CARL OLSEN,

Petitioner,

vs.

IOWA BOARD OF PHARMACY,

Respondent

Case No.: CVCV047867

**RULING ON PETITION FOR
JUDICIAL REVIEW**

Hearing in this case was held October 24, 2014. Petitioner Carl Olsen appeared personally. Megan Gavin appeared for respondent, Iowa Board of Pharmacy.

Introduction

This is a judicial review action from a November 6, 2013 ruling of the Iowa Board of Pharmacy. Mr. Olsen petitioned the Board to recommend to the 2014 Iowa General Assembly that it remove marijuana from Schedule I of the Uniform Controlled Substances Act, Iowa Code Chapter 124. He wishes to clear the way for medical use of marijuana in Iowa. The Board denied Mr. Olsen's petition.

Olsen timely filed this judicial review action in Polk County District Court. He asserts that the Board erred because it has a duty under Iowa Code Chapter 124 to recommend reclassification of marijuana. He filed an amended petition June 17, 2014. Mr. Olsen asks that the court set aside the Board's November 6, 2013 ruling, enter a declaratory judgment that marijuana has accepted medical use in treatment in the United States, and issue a writ of mandamus requiring the Board to recommend removal of marijuana from Schedule I of the Iowa Controlled Substances Act. The Board resists.

The record consists of attachments filed with the Petition for Judicial Review, and the Proposed Agency Record filed by respondent on July 25, 2014.

Statement of Facts

In 2010, at the request of Mr. Olsen, the Iowa Board of Pharmacy recommended to the legislature that it reclassify marijuana from a Schedule I controlled substance to a Schedule II controlled substance, under Iowa Code Chapter 124. The legislature has never adopted this recommendation.

In general, Schedule I controlled substances are illegal to sell or possess in the State of Iowa, and include such substances as opium derivatives and hallucinogens. *See* Iowa Code § 124.204(2013).¹ The Board of Pharmacy may recommend to the legislature that it remove a controlled substance from Schedule I, or reclassify a substance to Schedule II, which would allow for its use for medicinal purposes. *See* Iowa Code §§ 124.203, 124.205.

In August 2012 Olsen again petitioned the Board of Pharmacy to recommend removal of marijuana from Schedule I. In November 2012, the Board denied that request, stating “that the supporting documentation did not contain sufficient, new scientific information to warrant recommending the reclassification of marijuana this year.” (Cited in Ruling and Order on Petition for Judicial Review, Polk County Case No. CVCV045505). Olsen sought judicial review of that ruling. In February 2014, the Polk County District Court denied Mr. Olsen’s petition for judicial review, holding that the Board’s ruling was not irrational or illogical on its face, and that the record before the District Court was insufficient to determine whether the Board’s decision was in error. (Case No. CVCV045505, February 18, 2014 Ruling and Order on Petition for Judicial Review.)

In July 2013, Olsen again petitioned the Pharmacy Board to recommend that the legislature remove marijuana from Schedule I. He cited a number of scientific studies, as well as statutes from other states which allow medical use of marijuana. In November 2014, the Board denied Olsen’s request. This ruling is attached to plaintiff’s petition. It states:

¹ References in this ruling are to the 2013 Code of Iowa in effect at the time the Board ruled on Olsen’s petition, unless otherwise noted.

The Board recommended the rescheduling of marijuana in 2010. The Board recognized at that time and continues to recognize that the scheduling of controlled substances is ultimately a decision for the Iowa Legislature. The General Assembly took no action on the Board's 2010 recommendation. During the 2013 session, the legislature considered but did not act upon two bills calling for the rescheduling of marijuana. On November 6, 2013, the Board concluded that it was not advisable or appropriate to recommend the rescheduling of marijuana in 2014.

Ex. 1.

Motions for Judicial Notice

Olsen asks the court to take judicial notice of: 1) a law enacted in North Carolina in July 2014, 2) a law enacted in New York in July 2014, and 3) a law enacted in Missouri in July 2014.

The Board resists.

The court may consider such evidence as it deems appropriate in judicial review of "other agency action", i.e. actions other than evidentiary hearings. Iowa Code § 17A.19(7). However, the court's discretion to hear additional evidence "is for the limited purpose of 'highlighting what actually occurred in the agency in order to facilitate the court's search for errors of law or unreasonable, arbitrary, or capricious action.'" *Office of Consumer Advocate v. Iowa Utilities Board*, 770 N.W.2d 334, 343 (Iowa 2009) (internal citations omitted). The additional evidence is not to be used to retry the factual issues in district court. *Id.*

Because the laws that petitioner asks the court to consider were enacted after the Board's ruling was issued in November 2013, they have no relevance to what actually happened before the Board. Therefore, the three motions to take judicial notice are overruled.

Petitioner also cites legislation that was passed by the Iowa legislature in 2014 allowing use of cannabinoid oil for treatment of epilepsy. 2014 Iowa Acts, SF 2360. This legislation was also enacted after the agency action at issue here, and is not directly relevant to the Board's 2013 decision.

On December 6, 2014, Mr. Olsen filed a motion asking the court to consider a section of the statute that he had not cited previously – Section 124.208(9)(b). This code section was in effect when the Board issued its decision in November 2013. The court will consider this statute in ruling on this matter.

Standard of Review

This is a proceeding for judicial review of administrative agency action under Iowa Code Chapter 17A. Petitioner may obtain relief from agency action if his substantial rights are prejudiced, and the agency has violated any of the subsections of Code Section 17A.19(10). Olsen asserts that the Board's decision is based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency, in violation of Iowa Code Section 17A.19(10)(c).²

The Board argues that the decision to recommend rescheduling of marijuana is a decision that is vested by a provision of law in the Board's discretion, and thus its decision should be reversed only if it is irrational, illogical, or wholly unjustifiable, pursuant to Section 17A.19(10)(I). The court must not give any deference to the agency's view of whether it is vested with discretion to interpret the law. Iowa Code § 17A.19(11)(a).

The Iowa Supreme Court has stated:

Our review of authorities on this subject has confirmed our belief that each case requires a careful look at the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes. It is generally inappropriate, in the absence of any explicit guidance from the legislature, to determine whether an agency has the authority to interpret an entire statutory scheme. As we have seen, it is possible that an agency has the authority to interpret some portions of or certain specialized language in a statute, but does not have the authority to interpret other statutory provisions. Accordingly, broad articulations of an agency's authority, or lack of authority,

² Olsen's petition for judicial review alleges violations of additional provisions of Section 17A.19(10). *See Id.*, ¶ 31. However, he did not brief or argue these additional alleged violations. Therefore the court deems them waived.

should be avoided in the absence of an express grant of broad interpretive authority.

Renda v. Iowa Civil Rights Com'n, 784 N.W.2d 8, 13 -14 (Iowa 2010). The Court in *Renda* set forth guidelines for courts to follow, including 1) whether the statutory provision being interpreted is a substantive term within the special expertise of the agency; 2) whether the provisions to be interpreted are found in a statute other than the statute the agency has been tasked with enforcing; and 3) whether the term has an independent legal definition that is not uniquely within the subject matter expertise of the agency. *Renda*, 784 N.W.2d at 14.

The court has reviewed the specific authority granted to the Board to make annual recommendations for reclassification of controlled substances to the legislature (Sections 124.201(1) and (2)); the statutes listing marijuana as controlled substances (Iowa Code § 124.204(4)(m), 124.206(7)(a), and 124.208(9)(b)); and the statutes dealing with reclassification or deletions of controlled substances (Code Sections 124.203 and 124.205). In addition, Iowa Code Section 135.31 gives the Board of Pharmacy policymaking authority. Five of the seven members of the board must be licensed pharmacists. Iowa Code § 147.(1)(e). The statutory scheme for classification of controlled substances is highly technical and relies heavily on the expertise of the Board. Based upon these statutes, the court concludes the Board is given discretion to make recommendations for rescheduling controlled substances, and the decision of the Board is entitled to appropriate deference under Section 17A.19(10) and (11).

Therefore, the court will reverse the agency's decision only if it is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(l). Review of agency action under the irrational, illogical, or wholly unjustifiable standard is highly deferential. *Iowa Dental Ass'n v. Iowa Ins. Div.*, 831 N.W.2d 138, 142-43 (Iowa 2013).

Discussion and Analysis

This case turns on interpretation of several provisions of Iowa Code Chapter 124, the Uniform Controlled Substances Act. *See* Iowa Code Section 124.601.

Chapter 124 creates five schedules for controlled substances. Schedule I substances are listed in Section 124.204, and are the most highly regulated substances. Schedule I substances include opiates and hallucinogenic substances. Marijuana is listed under Schedule I as follows: “Marijuana, except as otherwise provided by rules of the board [of pharmacy] for medicinal purposes.” Iowa Code § 124.204(4)(m). The Code section also states, “Exclusions. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.” Iowa Code § 124.204(7).

Schedule II controlled substances are listed in Section 124.206, and include substances which are addictive, but frequently used for medical purposes such as opiates, codeine, hydrocodone, and morphine. *See* Iowa Code § 124.206(2). Marijuana is also listed in Schedule II as follows: “Marijuana when used for medicinal purposes pursuant to rules of the board.” Iowa Code § 124.206(7)(a).

Schedule III controlled substances are listed in Code Section 124.208. They include stimulants, depressants, and narcotic drugs. *See* Iowa Code § 124.208(2). Dronabinol, a derivative of the cannabis plant, is listed in Schedule III. Iowa Code § 124.208(9)(b). This Code section states that the referenced drug – ANDA – has been approved the U.S. Food and Drug Administration. *Id.*

Thus the legislature has recognized that the Board may enact rules for medical use of marijuana under both Schedule I and Schedule II. To date the Board of Pharmacy has not enacted rules relating to the medical use of marijuana. The history of these enactments

concerning marijuana's listing in Schedule I and Schedule II of Chapter 124 is set forth in a dissenting opinion in *State v. Bonjour*, 694 N.W.2d 511, 516-17 (Iowa 2005) (Wiggins, J. and Lavorato, C.J. dissenting). In that case the court considered a different issue than is presented here, but the discussion of the statutory history concerning inclusion of marijuana under Schedules I and II is instructive. This is an issue which has been raised, studied, and considered in the past in Iowa. *See Id.*

The Board is given the duty to make recommendations to the legislature for deletions and revisions to the schedules of controlled substances "which it deems necessary or advisable."

Iowa Code Section 124.201(1). That section states:

1. The board shall administer the regulatory provisions of this chapter. 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 [section 124.204](#), [124.206](#), [124.208](#), [124.210](#), or [124.212](#), ***which it deems necessary or advisable***. In making a recommendation to the general assembly regarding a substance, the board shall consider the following:

.

2. After considering the above factors, the board shall make a recommendation to the general assembly, specifying the change which should be made in existing schedules, if it finds that the potential for abuse or lack thereof of the substance is not properly reflected by the existing schedules.

Iowa Code § 124.201(1)(emphasis added).

In addition, Iowa Code Section 124.203 states that the Board shall recommend to the legislature that it place a substance in Schedule I if it has a high potential for abuse, and has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision. Iowa Code § 124.203(1) (2013). The statute also states: "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(2).

Iowa Code Section 124.205 states that the Board shall recommend to the legislature that is place a substance in Schedule II if it has 1) a high potential for abuse, 2) currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions, and 3) abuse of the substance may lead to severe psychic or physical dependence. Iowa Code § 124.205(1).

Petitioner argues that, based on the record presented to the Board with his petition, the Board is required to conclude that marijuana has “currently accepted medical use in treatment in the United States,” within the meaning of Iowa Code Section 124.203(1). His petition to the Board includes citations to the record made before the Board in 2010 when it voted to recommend rescheduling marijuana from Schedule I to Schedule II. He also cited 19 states which accepted medical use of marijuana in treatment and a CD of scientific literature on this topic. (Petition for Agency Action, pp. 7-8.) He then argues that, under subsection (2) of Section 124.205, the Board must recommend removal of marijuana from the list of Schedule I controlled substances.

In construing statutes, the court must ascertain legislative intent. *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 194 (Iowa 2012). In doing so, the court is to consider the language used in the statute, the object the legislature sought to accomplish, and the wrong the general assembly sought to remedy. *Id.* The court searches for legislative intent as shown by what the legislature said, rather than what it should or might have said. *Auen V. Alcoholic Beverages Div., Iowa Dept. of Commerce*. 679 N.W.2d 586, 590 (Iowa 2004). If a term is not defined in a statute, the term is given its ordinary and common meaning by considering the

context within which it is used. *Id.* If possible, a statute must be construed so as to give effect to all its provisions. *State v. Harrison*, 325 N.W.2d 770, (Iowa Ct. App. 1982); *see also State v. Netzer*, 579 S.W.2d 170 (Mo. Ct. App. S.D. 1979) (stating provisions of Uniform Controlled Substances Act must be construed together).

Chapter 124 is based on the Uniform Controlled Substances Act, and is to be construed to carry out its general purpose of making uniform the law of those states which enact it. Iowa Code § § 124.601, 124.602. “The Uniform Controlled Substances Act was drafted to maintain uniformity between the laws of the several states and those of the federal government and is designed to complement the federal law and provide an interlocking trellis of federal and state law to enable government at all levels to control more effectively the drug abuse problem.” Prefatory Note to Uniform Controlled Substances Act (1990). One of the major purposes of the federal Controlled Substances Act is to prevent illegal manufacture, distribution, and possession of controlled substances that have a substantial and detrimental effect on the health and welfare of the American people. 21 U.S.C. § 801.

Petitioner focuses on the language of Section 124.203(2), which states that the legislature “shall” recommend deletion of a controlled substance from Schedule I if it does not meet the criteria concerning medical use in treatment in the United States. However, this narrow reading of the statute ignores the broad language of Section 124.201, which states that the Board shall annually recommend revisions to the schedules of substances “which it deems necessary or advisable.” Sections 124.201, .203, and .205 must be read to give effect to all of them. In doing so, the court concludes the legislature intended that the Board have discretion to recommend whether a controlled substance should be removed from Schedule I, or reclassified from Schedule I to Schedule II. This authority is clearly stated in subsection (201). The criteria for

reclassification or deletion are set forth in subsections (203) and (205). Petitioner's interpretation would nullify the language in Section 124.201.

Because the Board has discretion, petitioner must show that the Board abused its discretion in denying his petition for agency action. The Board made a finding that it did not deem it "advisable or appropriate to recommend the rescheduling of marijuana in 2014." This is within the discretion of the Board, and petitioner has not shown that this decision is irrational, illogical, or wholly unjustifiable. While a previous iteration of the Board did make such a recommendation to the legislature in 2010, in subsequent years the Board has declined to do so. This is within its discretion.

The court has also considered Section 124.208(9) and its listing of dronabinol, derived from the cannabis plant, as a Schedule III controlled substance. However, this does not cause the court to change its opinion that it is within the discretion of the Board whether to recommend marijuana be removed from Schedule I, for the reasons set forth above.

For the reasons stated above, the petition for judicial review should be dismissed.

IT IS ORDERED that the petition for judicial review is dismissed, with costs taxed to petitioner.

Dated this 10th day of December, 2014.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV047867 CARL OLSEN VS IOWA BOARD OF PHARMACY

So Ordered

A handwritten signature in black ink, appearing to read "Eliza Ovrom". The signature is written in a cursive style with a long, sweeping underline.

Eliza Ovrom, District Court Judge,
Fifth Judicial District of Iowa

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IN THE COURT OF APPEALS OF IOWA

No. 14-2164
Filed May 11, 2016

CARL ERIC OLSEN,
Plaintiff-Appellant,

vs.

IOWA BOARD OF PHARMACY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Carl Olsen appeals from the district court's order on judicial review of the ruling of the Iowa Board of Pharmacy. **AFFIRMED.**

Carl Eric Olsen, Des Moines, appellant pro se.

Thomas J. Miller, Attorney General, and Meghan L. Gavin, Assistant Attorney General, for appellee.

Considered by Danilson, C.J., and Vogel and Potterfield, JJ.

DANILSON, Chief Judge.

Carl Olsen appeals from the district court's order on judicial review of the November 6, 2013 ruling of the Iowa Board of Pharmacy rejecting Olsen's petition to recommend to the 2014 legislature that marijuana be removed from Schedule I of the controlled substances. See Iowa Code § 124.204(4)(m) (2013) (listing marijuana as a Schedule I hallucinogenic substance "except as otherwise provided by rules of the board for medicinal purposes"). The question presented to us is whether the Board *must* recommend the reclassification of marijuana to the legislature on a yearly basis. The district court agreed with the Board that its statutory authority provides the Board discretion to do so. We agree.

The legislature has delegated broad authority to the Board to "administer the regulatory provisions of this chapter," entitled controlled substances. Iowa Code § 124.201(1) ("The board shall administer the regulatory provisions of this chapter."). One duty specified is that "[a]nnually . . . the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in section 124.204, . . . , which it deems necessary or advisable."). *Id.*

On July 30, 2013, Olsen petitioned the Board to recommend marijuana be removed from the list of schedule I controlled substances. The Board considered the petition at its November meeting and voted to deny the petition. In its written decision, the Board explained:

The Board recommended the rescheduling of marijuana in 2010. The Board recognized at that time and continues to recognize that the scheduling of controlled substances is ultimately a decision for the Iowa Legislature. The General Assembly took no action on the Board's 2010 recommendation. During the 2013

session, the legislature considered but did not act upon two bills calling for the rescheduling of marijuana. On November 6, 2013, the Board concluded that it was not advisable or appropriate to recommend the rescheduling of marijuana in 2014.

Olsen sought judicial review in the district court, arguing the Board had no discretion to deny the petition. The district court wrote:

Petitioner [Olsen] focuses on the language of section 124.203(2), which states that the legislature “shall” recommend deletion of a controlled substance from Schedule I if it does not meet the criteria concerning medical use in treatment in the United States. However, this narrow reading of the statute ignores the broad language of section 124.201, which states that the Board shall annually recommend revisions to the schedules of substances “which it deems necessary or advisable.” Sections 124.201, .203, and .205 must be read to give effect to all of them. In doing so, the court concludes the legislature intended that the Board have discretion to recommend whether a controlled substance should be removed from Schedule I, or reclassified from Schedule I to Schedule II. This authority is clearly stated in subsection [124.201(1)].

A court may only reverse the agency’s ruling “[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(10)(f). Certainly the Board could reasonably conclude it was unnecessary to repeat its recommendation for reclassification that it provided in 2010 in light of the fact that the legislature gave consideration to reclassification in the 2013 legislative session. Moreover, there is no indication the Board has withdrawn its earlier recommendation. We do not find the Board’s interpretation that it has discretion to recommend or to choose not to continually recommend reclassification under section 124.401(1) to be irrational, illogical, or wholly unjustifiable. Although the Board must make annual

recommendations, section 124.201 does not require a running list of its past recommendations on an annual basis. We therefore affirm.

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
14-2164

Case Title
Olsen v. Iowa Board of Pharmacy

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