

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

June 29, 2014

Henry W. Latham II
District Court Judge
Scott County Courthouse
400 W. 4th St.
Davenport, Iowa 52801

Re: State of Iowa v. Benton Mackenzie
No. FECR354410

Dear Judge Latham,

I have reviewed your order of May 28, 2014, in which you deny the medical necessity defense to Benton Mackenzie based on the ruling in State of Iowa v. Lloyd Bonjour, 694 N.W.2d 511 (Iowa 2005). The facts upon which the Bonjour case were decided have changed since that decision was made by the Iowa Supreme Court in 2005.

In 2010, the Iowa Board of Pharmacy ruled unanimously that marijuana has medical use and recommended the state enact a medical marijuana law. I have attached a copy of their recommendations to the Iowa legislature.

Secondly, on May 30, the Iowa legislature enacted a limited medical marijuana law that recognizes an extract from the marijuana plant as medicine here in Iowa. I have attached a copy of this new Iowa law.

Beyond the fact that I think the ruling in the Bonjour case is no longer valid, an argument that was not made in that case or this one is that the Iowa District Court lacks jurisdiction to hear this case against Benton Mackenzie. Marijuana is unlawfully classified in Iowa because it no longer meets the definition of a schedule I controlled substance. Marijuana now has accepted medical use in

treatment in the United States, in twenty-two (22) states¹ and in the District of Columbia². In addition, another nine (9) states³ have recently enacted cannabis oil laws that require citizens to leave their states and travel to one of the twenty-three (23) jurisdictions where the oil can be obtained.

By any analysis, scientific or legal, marijuana has accepted medical use in treatment in the United States, thereby making its current classification here in Iowa unlawful and depriving the Iowa District Court of jurisdiction in this case.

Sincerely,

Carl Olsen

¹ Alaska Statutes § 17.37 (1998); Arizona Revised Statutes, Title 36, Chapter 28.1, §§ 36-2801 through 36-2819 (2010); California Health & Safety Code § 11362.5 (1996); Colorado Constitution Article XVIII, Section 14 (2000); Connecticut Public Act No. 12-55, Connecticut General Statutes, Chapter 420f (2012); Delaware Code, Title 16, Chapter 49A, §§ 4901A through 4926A (2011); Hawaii Revised Statutes § 329-121 (2000); Illinois Public Act 98-0122 (2013); 22 Maine Revised Statutes § 2383-B (1999); Annotated Code of Maryland Section 13-3301 through 13-3303 and 13-3307 through 13-3311 (2014); Massachusetts Chapter 369 of the Acts of 2012 (2012); Michigan Compiled Laws, Chapter 333, §§ 333.26421 through 333.26430 (2008); Minnesota SF 2470 -- Signed into law by Gov. Mark Dayton on May 29, 2014, Approved: By Senate 46-16, by House 89-40, Effective: May 30, 2014; Montana Code Annotated § 50-46-101 (2004); Nevada Constitution Article 4 § 38 - Nevada Revised Statutes Annotated § 453A.010 (2000); New Hampshire Revised Statutes Annotated Chapter 126-W (2013); New Jersey Public Laws 2009, Chapter 307, New Jersey Statutes, Chapter 24:6I, §§ 24:6I-1 through 24:6I-16 (2010); New Mexico Statutes Annotated § 30-31C-1 (2007); Oregon Revised Statutes § 475.300 (1998); Rhode Island General Laws § 21-28.6-1 (2006); 18 Vermont Statutes Annotated § 4471 (2004); Revised Code Washington (ARCW) § 69.51A.005 (1998).

² D.C. Law 18-210; D.C. Official Code, Title 7, Chapter 16B, §§ 7-1671.01 through 7-1671.13 (2010).

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

Exhibit #2 - Petition for Judicial Review - June 16, 2014

State of Iowa
Board of Pharmacy

RiverPoint Business Park
400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688
<http://www.state.ia.us/ibpe>

Telephone: (515) 281-5944 Facsimile: (515) 281-4609

BOARD MEMBERS

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Mapleton

SUSAN M. FREY, R. Ph.
Villisca

MARGARET WHITWORTH
Cedar Rapids

VERNON H. BENJAMIN, R. Ph., Argyle
Chairperson

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

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DEEANN WEDEMEYER OLESON, Pharm. D.
Guthrie Center

ANN DIEHL
Osceola

MARK M. ANLIKER, R. Ph.
Emmetsburg

MINUTES

February 17, 2010

The Iowa Board of Pharmacy met on February 17, 2010, in the conference room at 400 SW Eighth Street, Des Moines, Iowa at 9:00 a.m. Chairperson Benjamin called the meeting to order at 9:02 a.m.

MEMBERS PRESENT

Vernon H. Benjamin, Chairperson
Susan M. Frey, Vice-Chair
Mark M. Anliker
Annabelle Diehl
Edward L. Maier
Peggy M. Whitworth

MEMBERS ABSENT

DeeAnn Wedemeyer Oleson

STAFF PRESENT

Lloyd Jessen, Executive Director
Scott Galenbeck, Esq., Assistant Attorney
General
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary

Compliance Officers Present:

Bernie Berntsen
Jim Wolfe

I. Medical Marijuana.

After the Board held four public meetings and reviewed a substantial amount of medical marijuana material, the Board met to deliberate the possible reclassification of marijuana from Schedule I of the Iowa Controlled Substances Act (Act) into Schedule II of the Act.

Motion (Maier/Anliker) the Iowa Board of Pharmacy recommends that the legislature reclassify marijuana from Schedule I of the Iowa Controlled Substance Act (Act) into Schedule II of the Act with the further recommendation that the legislature convene a task force or study committee comprised of various disciplines including but not limited to the following: a representative of a seriously ill patient; a representative of law enforcement; a representative of the Iowa Attorney General; a representative of an HIV organization or a physician caring for an AIDS patient; a

substance abuse treatment representative; a person living with a serious illness; a hospice or palliative care representative; a representative of the Iowa Board of Nursing; a representative of the Iowa Board of Medicine; and a representative of the Iowa Board of Pharmacy, for the purpose of making recommendations back to the legislature regarding the administration of a medical marijuana program. Roll call vote. Yes: Anliker, Benjamin, Diehl, Frey, Maier, Whitworth; No: None; Abstain: None; Absent: Oleson. Passed: 6-0-0-1.

Motion (Maier/Frey) to adjourn the meeting. Passed: 6-0-0-1. Absent: Oleson. Meeting adjourned at 12:47 p.m. on February 17, 2010.

Becky Hall
Becky Hall
Recording Secretary

Lloyd K. Jessen
Lloyd K. Jessen
Executive Director

Vernon H. Benjamin
Vernon H. Benjamin
Board Chair

APPROVED THIS 9th DAY OF March, 2010.

Exhibit #3 - Petition for Judicial Review - June 16, 2014



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

May 30, 2014

The Honorable Matt Schultz
Secretary of State of Iowa
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 2360, an Act creating the medical cannabidiol act and providing penalties.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink that reads "Terry E. Branstad".

Terry E. Branstad
Governor

cc: Secretary of the Senate
Clerk of the House



Senate File 2360

AN ACT
CREATING THE MEDICAL CANNABIDIOL ACT AND PROVIDING PENALTIES.

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

Section 1. Section 124.401, subsection 5, Code 2014, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 2:

NEW UNNUMBERED PARAGRAPH. A person may knowingly or intentionally recommend, possess, use, dispense, deliver, transport, or administer cannabidiol if the recommendation, possession, use, dispensing, delivery, transporting, or administering is in accordance with the provisions of chapter 124D. For purposes of this paragraph, "cannabidiol" means the same as defined in section 124D.2.

Sec. 2. NEW SECTION. 124D.1 Short title.

This chapter shall be known and may be cited as the "*Medical Cannabidiol Act*".

Sec. 3. NEW SECTION. 124D.2 Definitions.

As used in this chapter:

1. "*Cannabidiol*" means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that is essentially free from plant material, and has a tetrahydrocannabinol level of no more than three percent.

2. "*Department*" means the department of public health.

3. "*Intractable epilepsy*" means an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.

4. "*Neurologist*" means an allopathic or osteopathic physician board-certified in neurology in good standing and licensed under chapter 148.

5. "*Primary caregiver*" means a person, at least eighteen years of age, who has been designated by a patient's neurologist or a person having custody of a patient, as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabidiol pursuant to the provisions of this chapter.

Sec. 4. NEW SECTION. 124D.3 Neurologist recommendation — medical use of cannabidiol.

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 if no other satisfactory alternative treatment options exist for the patient and all of the following conditions apply:

1. The patient is a permanent resident of this state.

2. A neurologist has treated the patient for intractable epilepsy for at least six months. For purposes of this treatment period, and notwithstanding section 124D.2, subsection 4, treatment provided by a neurologist may include treatment by an out-of-state licensed neurologist in good standing.

3. The neurologist has tried alternative treatment options that have not alleviated the patient's symptoms.

4. The neurologist determines the risks of recommending the medical use of cannabidiol are reasonable in light of the potential benefit for the patient.

5. The neurologist maintains a patient treatment plan.

Sec. 5. NEW SECTION. 124D.4 Cannabidiol registration card.

1. *Issuance to patient.* The department may approve the issuance of a cannabidiol registration card by the department of transportation to a patient who:

a. Is at least eighteen years of age.

b. Is a permanent resident of this state.

c. Requests the patient's neurologist to submit a written recommendation to the department signed by the neurologist that the patient may benefit from the medical use of cannabidiol pursuant to section 124D.3.

d. Submits an application to the department, on a form created by the department, in consultation with the department of transportation, that contains all of the following:

(1) The patient's full name, Iowa residence address, date of birth, and telephone number.

(2) A copy of the patient's valid photo identification.

(3) Full name, address, and telephone number of the patient's neurologist.

(4) Full name, residence address, date of birth, and telephone number of each primary caregiver of the patient, if any.

(5) Any other information required by rule.

2. *Patient card contents.* A cannabidiol registration card issued to a patient by the department of transportation pursuant to subsection 1 shall contain, at a minimum, all of the following:

a. The patient's full name, Iowa residence address, and date of birth.

b. The patient's photo.

c. The date of issuance and expiration date of the registration card.

d. Any other information required by rule.

3. *Issuance to primary caregiver.* For a patient in a primary caregiver's care, the department may approve the issuance of a cannabidiol registration card by the department of transportation to the primary caregiver who:

a. Is at least eighteen years of age.

b. Requests a patient's neurologist to submit a written recommendation to the department signed by the neurologist that a patient in the primary caregiver's care may benefit from the medical use of cannabidiol pursuant to section 124D.3.

c. Submits an application to the department, on a form

created by the department, in consultation with the department of transportation, that contains all of the following:

(1) The primary caregiver's full name, residence address, date of birth, and telephone number.

(2) The patient's full name.

(3) A copy of the primary caregiver's valid photo identification.

(4) Full name, address, and telephone number of the patient's neurologist.

(5) Any other information required by rule.

4. *Primary caregiver card contents.* A cannabidiol registration card issued by the department of transportation to a primary caregiver pursuant to subsection 3 shall contain, at a minimum, all of the following:

a. The primary caregiver's full name, residence address, and date of birth.

b. The primary caregiver's photo.

c. The date of issuance and expiration date of the registration card.

d. The full name of each patient in the primary caregiver's care.

e. Any other information required by rule.

5. *Expiration date of card.* A cannabidiol registration card issued pursuant to this section shall expire one year after the date of issuance and may be renewed.

6. *Card issuance — department of transportation.* The department may enter into a chapter 28E agreement with the department of transportation to facilitate the issuance of a cannabidiol registration card pursuant to subsections 1 and 3.

Sec. 6. NEW SECTION. 124D.5 Department duties — rules.

1. a. The department shall maintain a confidential file of the names of each patient to or for whom the department issues a cannabidiol registration card and the name of each primary caregiver to whom the department issues a cannabidiol registration card under section 124D.4.

b. Individual names contained in the file shall be confidential and shall not be subject to disclosure, except as provided in subparagraph (1).

(1) Information in the confidential file maintained pursuant to paragraph "a" may be released to the following persons under the following circumstances:

(a) To authorized employees or agents of the department and the department of transportation as necessary to perform the

duties of the department and the department of transportation pursuant to this chapter.

(b) To authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a cannabidiol registration card issued pursuant to this chapter.

(2) Release of information pursuant to subparagraph (1) shall be consistent with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

2. The department, in consultation with the department of transportation, shall adopt rules to administer this chapter which shall include but not be limited to rules to establish the manner in which the department shall consider applications for new and renewal cannabidiol registration cards.

Sec. 7. NEW SECTION. 124D.6 Medical use of cannabidiol — affirmative defense.

1. *a.* A recommendation for the possession or use of cannabidiol as authorized by this chapter shall be provided exclusively by a neurologist for a patient who has been diagnosed with intractable epilepsy.

b. Cannabidiol provided exclusively pursuant to the recommendation of a neurologist shall be obtained from an out-of-state source and shall only be recommended for oral or transdermal administration.

c. A neurologist shall be the sole authorized recommender as part of the treatment plan by the neurologist of a patient diagnosed with intractable epilepsy. A neurologist shall have the sole authority to recommend the use or amount of cannabidiol, if any, in the treatment plan of a patient diagnosed with intractable epilepsy.

2. A neurologist, including any authorized agent thereof, shall not be subject to prosecution for the unlawful recommendation, possession, or administration of marijuana under the laws of this state for activities arising directly out of or directly related to the recommendation or use of cannabidiol in the treatment of a patient diagnosed with intractable epilepsy.

3. *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.

c. (1) The defenses afforded a patient under paragraph "a" apply to a patient only if the quantity of cannabidiol oil possessed by the patient does not exceed thirty-two ounces.

(2) The defenses afforded a primary caregiver under paragraph "b" apply to a primary caregiver only if the quantity of cannabidiol oil possessed by the primary caregiver does not exceed thirty-two ounces per patient.

d. If a patient or primary caregiver is charged with the commission of a crime and is not in possession of the person's cannabidiol registration card, any charge or charges filed against the person shall be dismissed by the court if the person produces to the court at the person's trial a cannabidiol registration card issued to that person and valid at the time the person was charged.

4. An agency of this state or a political subdivision thereof, including any law enforcement agency, shall not remove or initiate proceedings to remove a patient under the age of eighteen from the home of a parent based solely upon the parent's or patient's possession or use of cannabidiol as authorized under this chapter.

Sec. 8. NEW SECTION. 124D.7 Penalties.

A person who knowingly or intentionally possesses or uses cannabidiol in violation of the requirements of this chapter is subject to the penalties provided under chapters 124 and 453B.

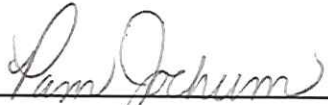
Sec. 9. NEW SECTION. 124D.8 Repeal.

This chapter is repealed July 1, 2017.

Sec. 10. REPORTS. The university of Iowa carver college of medicine and college of pharmacy shall, on or before July 1 of each year, beginning July 1, 2015, submit a report detailing

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the scientific literature, studies, and clinical trials regarding the use of cannabidiol on patients diagnosed with intractable epilepsy to the department of public health and the general assembly.




PAM JOCHUM
President of the Senate



KRAIG PAULSEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2360, Eighty-fifth General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 30, 2014



TERRY E. BRANSTAD
Governor