Washington State Department of Health
Meeting on Marijuana Scheduling
November 20, 2015, 2:00 to 4:00 p.m.
Educational Services District 113
6005 Tyee Drive SW, Tumwater, WA 98512

Prepared Statement of Carl Olsen

My name is Carl Olsen and I live in Des Moines, Iowa. Thank you for the opportunity to participate in this meeting.

Background:

I exchanged emails and phone calls with Jason McGill in 2011 before your former governor, Christine Gregoire, petitioned the U.S. Drug Enforcement Administration to reclassify marijuana under the federal Controlled Substances Act. It was my advice that the state of Washington remove marijuana from Washington's state schedule 1 to demonstrate good faith in asking the federal government to remove marijuana from federal schedule 1. Governor Gregoire did not accept my advice. I am attaching a copy of the email exchange between myself and Mr. McGill (see Attachment #1).

I was a participant in the last federal marijuana scheduling petition which was denied by the U.S. Drug Enforcement Administration in 2011. Denial of Petition to Initiate Proceedings to Reschedule Marijuana ("Denial"), 76 Fed. Reg. 40,552, 40,552 (July 8, 2011). I was an intervenor in the appeal from that denial. Americans for Safe Access v. Drug Enforcement Administration, 706 F.3d 438 (D.C. Cir. 2013), *certiorari denied*, Carl Olsen v. Drug Enforcement Administration, 134 S. Ct. 673, 187 L. Ed. 2d 422 (2013).[1]

In 2008, I filed a petition with the Iowa Board of Pharmacy to remove marijuana from Iowa schedule 1. In 2010, the Iowa Board of Pharmacy voted unanimously to recommend that the Iowa legislature remove

[1] http://medicalmarijuana.procon.org/sourcefiles/carl-olsen-writ-of-certiorari-09112013.pdf

marijuana from schedule 1 in the state of Iowa. I am attaching copies of those announcements from the National Association of Boards of Pharmacy (see Attachment #2 and Attachment #3).

On April 15, 2015, the Iowa Senate voted 44-0-6 in favor of an amendment (S-3123) to SF 484 which would remove marijuana from schedule 1 in Iowa. SF 484 is currently pending in the Iowa House of Representatives. I am attaching a copy of S-3123 (see Attachment #4). Another bill, HF 567, which would also remove marijuana from schedule 1 in Iowa is currently pending in the Iowa House of Representatives. I am attaching a copy of that announcement from the National Association of Boards of Pharmacy (see Attachment #5).

Preliminary Remarks:

I would like to thank Governor Jay Inslee for the rationale he gave on April 24, 2015, in vetoing sections 42 and 43 of 2SSB 5052. Governor Inslee praised the legislature for wanting to remove cannabis products from schedule 1, while at the same time pointing out the difficulty of leaving the source for those products in schedule 1. Governor Inslee is right. The entire plant and all of its components need to be removed from schedule 1.

Legal Argument:

The petition I filed with the Iowa Board of Pharmacy in 2008 did not include any scientific evidence. The only evidence I presented were 12 state laws defining marijuana as medicine. I made a legal challenge to the scheduling based on federalism, not a traditional challenge as to whether the scheduling is reasonable. The administrative agency responsible for scheduling is always going to be timid about changing the status quo. No one has ever won a challenge to an administrative decision to maintain marijuana in schedule 1. I am the only person who has ever presented a legal reason why marijuana cannot be maintained in schedule 1, and I am the only person who has ever won an administrative ruling saying that marijuana should be removed from schedule 1. I am attaching a copy of the ruling from the Iowa Supreme Court dismissing my appeal because the pharmacy board ruled in my favor (see Attachment #6).

Like the controlled substances act in the state of Washington, the Iowa Controlled Substances Act requires that substances in schedule 1 must have no “accepted medical use in treatment in the United States” or be removed. See Iowa Code Chapter 124, Section 203(1)(b); Washington Code Chapter 69.50, Section 203(a)(2).

Because 12 states had accepted the medical use of marijuana in 2008, I said the condition had been met and the board was legally obligated to recommend that our legislature remove marijuana from schedule 1.

The board responded by saying that I had not addressed the issue of abuse potential and denied my petition. We appealed, and in 2009 the Iowa District Court ruled that the abuse potential of schedule 1 was identical to the abuse potential of schedule 2 and abuse potential was not relevant to my petition. Abuse potential is only relevant to moving a substance lower than schedule 2. I did not ask the board to place marijuana in any particular schedule. Therefore, the board could have recommended schedule 2 without considering marijuana’s potential for abuse. All I asked the board to do was eliminate schedule 1. I am attaching a copy of the court’s ruling (see Attachment #7).

In response to the Iowa District Court ruling, the board held a series of public meetings in four Iowa cities, Des Moines, Mason City, Iowa City, and Council Bluffs. Each meeting lasted between 8 to 9 hours. The board accepted written testimony from August of 2009 through November of 2009. In 2010, the board voted unanimously that marijuana should be removed from Iowa schedule 1.

Today, there are a total of 40 states and three federal jurisdictions that have enacted some kind of law recognizing either the whole plant cannabis or components of the plant as medicine. These laws prove beyond doubt that cannabis has accepted medical use in treatment in the United States. There is federal case law directly on point.

Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987):

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

Grinspoon v. DEA, 828 F.2d 881, 887 (1st Cir. 1987):

> Unlike the CSA scheduling restrictions, the FDCA interstate marketing provisions do not apply to drugs manufactured and marketed wholly intrastate. Compare 21 U.S.C. § 801(5) with 21 U.S.C. § 321 (b), 331, 355(a). Thus, it is possible that a substance may have both an accepted medical use and safety for use under medical supervision, even though no one has deemed it necessary to seek approval for interstate marketing.

The state of Washington has accepted the manufacture and marketing of cannabis for medical use wholly intrastate. The state of Washington has a right to do this under the federal Controlled Substances Act. There is federal case law directly on point.

Gonzales v. Oregon, 546 U.S. 243, 258 (2006):

> 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.

The Oregon case was about using schedule 2 drugs to assist people in committing suicide. The question was whether the state can determine the accepted medical use of controlled substances.

Federal scheduling is by administrative rule. If the administrative agency cannot make a rule, neither can it maintain an existing rule, that makes illegitimate a medical standard for care and treatment of patients that is specifically authorized under Washington state law. And, this makes perfect sense, because we don't think of authorized medical use as the "abuse" of controlled substances.

Recommendations:

1. The state of Washington should remove marijuana from schedule 1 because the state of Washington and 39 other states have accepted some form of medical use of marijuana in treatment. Leaving marijuana in schedule 1 which says it is not medicine and defining it elsewhere in the law as medicine is not good public policy.

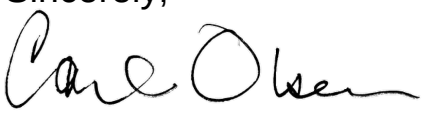
2. The state of Washington should not place marijuana in another schedule until the state of Washington has met with the U.S. Department of Justice to discuss the options.

3. The state of Washington should file for an injunction in federal court to enjoin the enforcement of federal schedule 1 where it interferes with the accepted medical use of marijuana in the state of Washington.

Conclusion:

Thank you for this opportunity to participate in discussing the question of marijuana scheduling in the state of Washington.

Sincerely,



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

From: McGill, Jason (GOV)
To: carl-olsen@mchsi.com
Subject: RE: The problem with Washington"s federal rescheduling petition
Date: Monday, December 5, 2011 2:58:06 PM

I want the DEA to reschedule it first to deal with the pharmacy issues, which they hold clear preemptive powers. If DEA reschedules it, I believe our board will follow because it clears the ways for pharmacy dispensing.

From: carl-olsen@mchsi.com [mailto:carl-olsen@mchsi.com]
Sent: Monday, December 05, 2011 12:43 PM
To: McGill, Jason (GOV)
Subject: Re: The problem with Washington's federal rescheduling petition

Jason,

There are various elements to the scheduling criteria, and one of those is "accepted medical use in treatment in the United States".

Think about it.

Your board of pharmacy can only decide whether something has accepted medical use in Washington. They don't have any authority to decide what is accepted in California or Oregon. They would have to look at California statutes and Oregon statutes to answer that question. It's not a question of science. It's a question of law. It's exactly the same for the DEA. Federal scheduling is administrative rulemaking and the U.S. Supreme Court has made it clear that states decide what is or is not accepted for medical use in their own state.

You need to get a state decision on this question of law as well as a federal decision.

I think I see what you are trying to do. You want to the DEA to deny your petition so you can say Congress needs to fix it. That is a legitimate strategy, but I don't like it. I'd rather see the system work the way it was intended to work.

Thanks for talking with me!

Carl

----- Original Message -----
From: carl-olsen@mchsi.com
To: "Jason McGill (GOV)" <Jason.McGill@gov.wa.gov>
Sent: Monday, December 5, 2011 2:29:15 PM GMT -06:00 US/Canada Central
Subject: Re: The problem with Washington's federal rescheduling petition

Gonzales v. Oregon, 546 U.S. 243, 258 (2006):
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.

----- Original Message -----
From: carl-olsen@mchsi.com
To: "Jason McGill (GOV)" <Jason.McGill@gov.wa.gov>
Sent: Monday, December 5, 2011 12:50:08 PM GMT -06:00 US/Canada Central
Subject: Re: The problem with Washington's federal rescheduling petition

Jason,

I will call you.

Thanks!

Carl

----- Original Message -----
From: "Jason McGill (GOV)" <Jason.McGill@gov.wa.gov>
To: "Carl Olsen" <carl-olsen@mchsi.com>
Sent: Monday, December 5, 2011 12:34:08 PM GMT -06:00 US/Canada Central
Subject: RE: The problem with Washington's federal rescheduling petition

Carl, I appreciate the healthy dialogue. At this point, let's take it up by phone: (360) 902-0448. I have too many emails to follow.

Thanks,

Jason

Jason T. McGill
Executive Policy Advisor for Health Care
Governor's Executive Policy Office

Office: (360) 902-0448
Jason.McGill@gov.wa.gov

Attachment #2

NABP e-News: March 03, 2010

March 3, 2010 12:00 AM

Iowa Board of Pharmacy Recommends Classifying Marijuana as Schedule II Drug

Following a unanimous vote at a special meeting held February 17, the Iowa Board of Pharmacy recommended to the Iowa state legislature that marijuana be reclassified as a Schedule II controlled substance, which could allow medical uses of the drug. The Board further advised that a task force of patients, medical professionals, and law enforcement officers should create guidelines for safely implementing a medical marijuana program, as reported by the Des Moines Register. The Board's decision was informed by a series of public meetings held in 2009, as well as by research and public comments. Bills relating to the creation of a medical marijuana act in Iowa were introduced to the legislature, but were either referred to committee or died during the current session. Thus, while the Iowa legislature will likely not act on the medical marijuana issue this session, the Board's recommendation could impact the outcome of future bills.

Canadian Internet Pharmacy Owner Loses License for Illegally Dispensing to US Consumers

The Canadian pharmacist who owned and operated a highly profitable Internet pharmacy complied with the decision of the Manitoba Pharmaceutical Association to have his name removed from the Register of Pharmacists. At disciplinary hearings in 2009, the pharmacist was charged with dispensing prescription drugs supplied from a business in the Bahamas to patients in the United States; allowing dispensed drugs to be shipped through other countries before entering the US, which

Iowa Board Approved Medical Marijuana Recommendation to Legislature

November 12, 2010 4:42 PM | Topics: Controlled Substances

As a follow-up to the decision made in February 2010, the Iowa Board of Pharmacy approved its recommendation to the Iowa Legislature that marijuana be reclassified as a Schedule II controlled substance, on November 2, 2010. The Iowa Board's February 2010 decision was informed by a series of public meetings held in 2009, as well as by research and public comments. If the state adopted a law to reschedule the drug, the change could allow medical uses of the drug in Iowa. According to Des Moines' KCCI News, Iowa legislators do not have an interest in debating the issue in the upcoming legislative sessions. The Board was petitioned to make rules related to rescheduling the drug at their November 2, 2010 meeting, but did not take action on this request. Vernon Benjamin, RPh, chairperson, Iowa Board of Pharmacy, explained to KCCI reporters that issues related to the production of marijuana for medical use, establishing proper prescription dosages, and setting penalties should be addressed through the state legislative process. More information about the Board's February 2010 decision is available in the NABP Newsroom.

Over 1,600 Deaths in Three Years Related to Prescription Drug Abuse...

NABP Developing System to Link PMPs Across States to Facilitate Dat...

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QUESTIONS? CHAT IS UNAVAILABLE

News Topics

Compounding
Controlled Substances
Counterfeit Drugs
Buying Medicine Online
Committee And Task Force Reports
Continuing Education
Diversion
Education
Electronic Prescriptions
Federal Regulations
Internet Pharmacy
Medication Collection Program Disposal
Over The Counter
Patient Safety
Pharmacies
Pharmacists
Pharmacy Technicians
Practitioner Prescriber
Prescribing Authority
Prescription Drug Abuse
Prescription Label
Prescription Monitoring Program

Senate File 484

S-3123

Amend Senate File 484 as follows:

1. Page 1, before line 1 by inserting:

<Section 1. Section 124.204, subsection 4, paragraphs m and u, Code 2015, are amended by striking the paragraphs.

Sec. ___. Section 124.204, subsection 7, Code 2015, is amended by striking the subsection.

Sec. ___. Section 124.206, subsection 7, Code 2015, is amended to read as follows:

7. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or, for purposes of paragraphs "*a*" and "*b*", which contains any of its salts, isomers, or salts of isomers whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "*isomer*" includes the optical, positional, and geometric isomers):

a. Marijuana ~~when used for medicinal purposes pursuant to rules of the board~~.

b. Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (Cannabis plant) as well as synthetic equivalents of the substances contained in the Cannabis plant, or in the resinous extractives of such plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

(1) 1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

~~*b.*~~ *c.* Nabilone [another name for nabilone: (+-) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].>

2. Title page, line 1, by striking <creating> and inserting <relating to>

STEVEN J. SODDERS

SF484.1457 (3) 86

rh/rj

Attachment #5

Iowa Senate Passes Bill to Address Sale of Synthetic Drugs, Reclassify Marijuana as Schedule II

May 13, 2015 5:00 PM | Topics: Controlled Substances and Medical Marijuana

The Iowa Senate has approved a bill that ensures penalties for selling synthetic drugs are in line with penalties for selling other controlled substances (CS), and an amendment to the bill has now tied it to the state's medical marijuana policy. If approved, House File 567 would allow the Iowa Board of Pharmacy to list substances, such as new formulations of synthetic drugs, as CS for up to two years and allow the state legislature more time to make such a designation permanent. As passed by the Iowa House of Representatives, the law is aimed at protecting consumers from potentially dangerous synthetic drugs. The senate's version of the bill would also reclassify marijuana as a Schedule II drug in Iowa, and reduce the penalty for possession of 5 grams or less of the drug to a misdemeanor, according to *The Gazette*. The amended bill will now return to the Iowa House of Representatives for reconsideration.

‹ Consumer Education, Awareness Key to Combating Rogue Online Drug Se...

Medical Marijuana Bill Approved by Louisiana Senate, Now Heads to H... ›

Washington State Department of Health, November 20, 2015

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

Copies to:

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505 Fifth Avenue, Suite 901
Des Moines, IA 50309

Scott Galenbeck
Assistant Attorney General
Hoover Building
LOCAL MAIL

Clerk of District Court
Polk County Courthouse
L O C A L

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

GEORGE McMAHON, BRYAN SCOTT and BARBARA DOUGLASS, **Petitioners,** **CARL OLSEN,** **Intervenor,** **v.** **IOWA BOARD OF PHARMACY,** **Respondent.**	**Case No. CV7415** **RULING ON PETITION FOR JUDICIAL REVIEW**

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'

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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 Unites 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

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

Original Filed.

Copies mailed to:

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Des Moines, IA 50309
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Scott Galenbeck
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Des Moines, IA 50319
ATTORNEY FOR RESPONDENT

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