

BEFORE THE IOWA BOARD OF PHARMACY

PETITION FOR AGENCY ACTION)	
)	ORDER DENYING PETITION
TO RESCHEDULE MARIJUANA)	
)	

PROCEDURAL BACKGROUND

On July 7, 2014, Carl Olsen filed a Petition for Agency Action requesting that the Iowa Board of Pharmacy ("Board") recommend to the Iowa General Assembly the removal of marijuana from Schedule I. The Petition does not request or suggest what schedule marijuana should be placed in, only that it be removed from Schedule I.

The Board first considered the Petition at its August 2014 meeting. The Board tabled consideration of the Petition at that time and appointed a committee to further study the request. The committee met on November 17, 2014, and invited public comment on the Petition. Several government agencies, advocacy groups, and private citizens provided both written and oral comments at the November meeting.

On November 19, 2014, the Board met in open session to deliberate the Petition. At that time, the Board voted to table the Petition until the January 2015 meeting. On January 5, 2015, the Board met in open session to deliberate and render a decision on the Petition. The Board voted to deny the Petition.

FACTUAL AND LEGAL BACKGROUND

Marijuana is currently listed in Schedule I under state law. *See* Iowa Code section 124.204(4)"m" (stating "Marijuana, except as otherwise provided by rules of the board for medicinal purposes."). Marijuana is also currently listed in Schedule II under state law. *See* Iowa Code section 124.206(7)"a" (stating "Marijuana when used for medicinal purposes pursuant to rules of the board."). In Iowa, marijuana is defined by Iowa law to include

all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

Iowa Code section 124.101(19). Marijuana is currently listed in Schedule I under federal law.

See 21 CFR § 1308.11(d)"23".

The Controlled Substances Act places some responsibilities on the Board as it relates to the scheduling of substances. In particular, Iowa Code section 124.203(2) provides:

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

In 2014, the Iowa General Assembly passed the Medical Cannabidiol Act. *See* Iowa Code chapter 124D. The Act permits the use of cannabidiol by patients suffering from intractable epilepsy. The Iowa General Assembly granted the authority to administer the provisions of the Act to the Iowa Department of Public Health.

ANALYSIS

Typically, the Board makes recommendations regarding the scheduling of substances to the Iowa General Assembly when the federal Drug Enforcement Agency (1) adds a new substance to a schedule, (2) moves a scheduled substance to a different schedule, or (3) removes a substance from scheduling. Essentially, the Board notifies the Iowa General Assembly of

changes in the federal scheduling of controlled substances and recommends changes in the schedules under state law to be in accordance with federal scheduling.

Despite the passage of laws regarding marijuana in several states, it remains a Schedule I controlled substance under federal law. As a matter of policy, the federal government has allowed states, through non-enforcement of federal law, to serve as laboratories of democracy by experimenting with medical marijuana programs. This, however, is a matter of policy and not of law. The federal government may change its policy at any time, thereby nullifying any laws or programs related to marijuana enacted by any state. The Board is hesitant to recommend a change in the state scheduling of a substance that directly conflicts with federal law.

Regardless of federal law, Iowa Code section 124.203 requires that the Board recommend the removal of a substance from Schedule I if the Board finds that either (1) the substance does not have a high potential for abuse, or (2) the substance has some accepted medicinal use in treatment in the United States. While the Board believes that marijuana has a high potential for abuse, it also believes that the passage of the Medical Cannabidiol Act is an affirmative recognition by the Iowa General Assembly that there is some medical use for marijuana, as it is defined by Iowa Code section 124.101(19). As a result of the Medical Cannabidiol Act, Schedule I is inappropriate for cannabidiol.

The Board is not inclined to make the broader recommendation requested by the Petition that marijuana be removed from Schedule I. Many substances can be derived from marijuana—some may have a medical use, while others may not. Therefore, in the Board's opinion, it would be more accurate to schedule each derivate after an individualized analysis. The Board points out that separately scheduling a substance that is a derivative of marijuana, such as cannabidiol, should be accompanied by an amendment to the definition of marijuana in Iowa Code section

124.101(19), explicitly excluding the derivative from the definition of marijuana, in order to avoid conflict.

The Board believes it has an obligation under the Controlled Substances Act to recommend the proper schedule for cannabidiol. Iowa Code section 124.205 establishes the criteria for including a substance in Schedule II. The criteria are: (1) the substance has a high potential for abuse, (2) the substance currently has accepted medical use with severe restrictions in the United States, and (3) abuse of the substance may lead to severe psychic or physical dependence. The Board feels that cannabidiol meets the criteria for Schedule II, and thus recommends to the Iowa General Assembly that cannabidiol, as defined by Iowa Code section 124D.2(1), be placed in Schedule II.

The Board believes that, if the Iowa General Assembly chooses to expand the Medical Cannabidiol Act or implement a medical marijuana program, a coalition of stakeholders should be established to further study the potential medicinal uses of marijuana or its derivatives in Iowa. 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, and patients. It is incumbent that the establishment of a program involving marijuana or its derivatives for medicinal use includes the perspectives of all of these groups. No single entity can determine what conditions marijuana or its derivatives could be used to treat, what safety measures are needed to prevent unlawful use, and the myriad of other concerns raised by a program involving marijuana or its derivatives for medicinal use in Iowa. The Board is particularly concerned about the ability of any program to establish the standardization of dosage and potency necessary to ensure patient safety and effective treatment.

The dual scheduling of marijuana under state law is a holdover from experimental marijuana research programs authorized more than thirty years ago. The dual scheduling has understandably led to confusion as to the Board's authority to promulgate rules authorizing the legal use of medical marijuana. The Board does not believe it was the intention of the Iowa General Assembly for the Board to unilaterally establish and implement a medical marijuana program in Iowa. This is evidenced by the fact that the Department of Public Health was vested with the authority to implement the Medical Cannabidiol Act. To avoid confusion, the Board recommends that the phrase "except as otherwise provided by rules of the board for medicinal purposes" be deleted from Iowa Code section 124.204(4)"m". In addition, the Board recommends that either the entirety of Iowa Code section 124.206(7)"a" be deleted, or, at a minimum, the phrase "pursuant to rules of the board" be deleted from Iowa Code section 124.206(7)"a".

ORDER

For the reasons stated herein, the Petition for Agency Action to Reschedule Marijuana is **DENIED.**

EDWARD MAIER
Chairperson, Iowa Board of Pharmacy