

BOARD OF PHARMACY EXAMINERS

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Petition by Carl Olsen )  
for the rescheduling of marijuana )  
pursuant to Iowa Code 124.201 )  
and 657 IAC Chapter 26 )

**PETITION FOR  
RULE MAKING  
OR ACTION**

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

Both state and federal law require that marijuana be transferred from schedule 1 to a lower schedule of Iowa's version of the Uniform Controlled Substances Act, Iowa Code Chapter 124.

Marijuana is incorrectly classified, Iowa Code § 124.204(4)(m), because it no longer fits the criteria for inclusion in schedule 1 as set forth in Iowa Code § 124.203(2):

Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

**GROUND FOR RESCHEDULING**

Twelve states accept the safety of marijuana for medical use, Alaska Statutes § 17.37 (2007), California Health & Safety Code § 11362.5 (2006), Colorado Constitution Article XVIII, Section 14 (2006), Hawaii Revised Statutes § 329-121 (2006), 22 Maine Revised Statutes § 2383-B (2005),

Montana Code Annotated § 50-46-101 (2006), Nevada Constitution Article 4 § 38 (2006) - Nevada Revised Statutes Annotated § 453A.010 (2006), New Mexico Statutes Annotated § 30-31C-1 (2007), Oregon Revised Statutes § 475.300 (2006), Rhode Island General Laws § 21-28.6-1 (2006), 18 Vermont Statutes Annotated § 4471 (2006), Revised Code Washington (ARCW) § 69.51A.005 (2006). All of these states allow medical marijuana use, possession, and cultivation.

Federal drug law, 21 U.S.C. § 903, gives the states the authority to determine accepted medical use. See, **Gonzales v. Oregon**, 546 U.S. 243, 269-270 (2006):

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)).

"The Government, in the end, maintains that the prescription requirement delegates to a single Executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general

standards of medical practice in every locality. The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it."

***Gonzales v. Oregon***, 546 U.S. at 275.

The Iowa Board of Pharmacy Examiners has an affirmative obligation to recommend changes in the schedules. Iowa Code § 124.201.

The 8 factors to be considered by the Iowa Board of Pharmacy Examiners, Iowa Code 124.201(1)(a)-(h), were considered In The Matter of Marijuana Rescheduling, DEA Docket No. 86-22, September 6, 1988 (attached as Exhibit #1), which resulted in a finding that, "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." Id. at pages 58-59. Please note that Carl Olsen was one of the petitioners in the DEA rescheduling petition.

Because no state accepted marijuana's medical use in 1988, the DEA Administrator was able to reject the conclusion of the Administrative Law Judge in DEA Docket No. 86-22 that marijuana must be transferred from schedule 1 to schedule 2 of the federal controlled substances act.

Because marijuana now has currently accepted medical use in 12 states, because federal law defines accepted medical use to be whatever the states say it is, and because the DEA's own Administrative Law Judge

Carl Olsen, May 12, 2008

has already determined that marijuana is safe for use under medical supervision, the Iowa definition for a schedule I controlled substance, Iowa Code § 124.203(2), no longer applies to marijuana and state law must be amended to reflect these changes.

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Dated this 12<sup>th</sup> day of May, 2008.