

**Iowa District Court
Polk County, Iowa**

CARL OLSEN,)	
)	
Petitioner,)	
)	
vs.)	
)	Docket No. _____
IOWA BOARD OF PHARMACY,)	
)	
Respondent.)	

AMENDED PETITION FOR JUDICIAL REVIEW

Carl Olsen respectfully petitions the Court to review the November 6, 2013, decision of the Iowa Board of Pharmacy (“Board” hereafter), attached hereto as **Exhibit #1**.

Introduction

In 1971, Iowa enacted the Uniform Controlled Substances Act. See Iowa Code § 124.602 (“This chapter may be cited as the ‘Uniform Controlled Substances Act’”). The legislative intent of Iowa’s Uniform Controlled Substances Act (“IUCSA” hereafter) is to make Iowa’s law uniform with those states that have adopted the Uniform Controlled Substances Act. See Iowa Code § 124.601 (“This chapter shall be so construed as to effectuate its general purpose to make uniform

the law of those states which enact it”). See Uniform Controlled Substances Act (1994) (U.L.A.) §§ 101-710 (“UCSA” hereafter).

The USCA is a model act created by the National Conference of Commissioners on Uniform State Laws (<http://www.uniformlaws.org/>) in 1970. The UCSA was designed to complement the federal Controlled Substances Act (http://www.uniformlaws.org/shared/docs/controlled%20substances/UCSA_final%20_94%20with%2095amends.pdf), at page 1 (“The 1970 Uniform Act was designed to complement the federal Controlled Substances Act, which was enacted in 1970”). 9 U.L.A. Pt. II 1 (2007) (Pocket Part current through 2013).

Like the federal Controlled Substance Act (“CSA” hereafter), the UCSA includes an administrative process for scheduling controlled substances. See 21 U.S.C. §§ 811 and 812, and see UCSA, §§ 201, 203, 205, 207, 209, 211, and 213.

The IUCSA contains a truncated, hybrid version of the administrative process in the UCSA and the CSA. See IUCSA, Iowa Code §§ 124.201, 203, 205, 207, 209, and 211. Unlike the UCSA or the CSA, the IUCSA does not give the administrative agency the authority to schedule controlled substances by formal rulemaking (which is why section 213 of the UCSA was not implemented in the IUCSA). Instead, the IUCSA designates the Board as an advisory body to the Iowa legislature. The Iowa legislature makes final decisions on scheduling, after receiving advice from the Board. It’s important to note here that the intent of the

USCA as explicitly stated in Iowa Code § 124.601, makes the advice of the Board extremely critical in Iowa's hybrid implementation of the UCSA. Marijuana would have been transferred to Schedule II of the IUCSA in 2010 if Iowa had implemented the same process the CSA and the UCSA use to determine scheduling. It's critical to stress that the Board's decision in 2010, attached hereto as **Exhibit #2**, is a legislative requirement and is not just some anomaly in Iowa law. In 2010, the Board did an exhaustive analysis of the eight (8) statutory factors in Iowa Code § 124.201(1)(a)-(h), as required by Iowa law, and determined that marijuana should no longer be included in Schedule I of the IUCSA.

Here is a simple analogy to help the court understand the context. The IUCSA is a structure designed to protect the public health. The Iowa legislature is the owner of the IUCSA. The Board is the alarm to warn the legislature when the IUCSA is no longer protecting the public health. The alarm went off in 2010 when the Board recommended the reclassification of marijuana¹.

Now, four years later, the public is desperately looking for an escape. The recently enacted cannabis oil legislation, SF 2360 signed by Governor Branstad on May 30, 2014² (attached hereto as **Exhibit #3**), is intended to be an escape, but it

¹ On February 17, 2010, the Iowa Board of Pharmacy recommended that the Iowa Legislature remove marijuana from Schedule I of the Iowa Uniform Controlled Substances Act. See **Exhibit #2**, attached hereto.

² <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=sf2360>

was crafted without regard for the advice of the Board. Not everyone is being protected by this new law³ (see **Exhibit #4** and **Exhibit #5**, state of Iowa prosecuting an Iowa man with terminal cancer for using the same cannabis oil, as well as his entire family, his parents, his wife, and his children). Those who are supposedly protected face peril and uncertainty⁴ (see **Exhibit #6** and **Exhibit #7**, detailing the perils Iowa families face in going to Colorado to get cannabis oil).

Marijuana is listed as a controlled substance in Schedule I of the Iowa Uniform Controlled Substances Act (Iowa Code Chapter 124). Iowa Code § 124.204(4)(m). Schedule I of the Act is for substances that have no “accepted medical use in treatment in the United States.” Iowa Code § 124.203(1)(b). See Ruling on Petition for Judicial Review, McMahon v. Iowa Board of Pharmacy, No. CV 7415, Polk County District Court (April 21, 2009), at page 4, footnote 1 (“A finding of accepted medical use for treatment in the United States alone would be

³ Des Moines Register, June 7, 2014, *The Register’s Editorial: Iowa officials now need to expand marijuana oils to other sufferers* (<http://www.desmoinesregister.com/story/opinion/editorials/2014/06/07/registers-editorial-iowa-officials-now-need-expand-marijuana-oils-sufferers/10108805/>); Quad City Times, June 4, 2010, *Mackenzie family’s marijuana trial date set* (http://qctimes.com/news/local/crime-and-courts/mackenzie-family-s-marijuana-trial-date-set/article_5f4563af-464a-5684-a310-9206c60871ec.html).

⁴ Sioux City Journal, June 15, 2014, *New medical cannabis law raises concerns in Siouxland* (http://siouxcityjournal.com/news/local/new-medical-cannabis-law-raises-concerns-in-siouxland/article_5cc5854c-d4c4-5dad-9831-8b9621aaf8ef.html); KCCI TV 8, May 2, 2014, *Iowa families face treacherous trip to get cannabis oil* (<http://www.kcci.com/news/iowa-families-face-treacherous-trip-to-get-cannabis-oil/25763938>).

sufficient to warrant recommendation for reclassification or removal pursuant to the language of Iowa Code section 124.203”), attached hereto as **Exhibit #8**.

To date, twenty-three (23) jurisdictions, twenty-two (22) states⁵ and the District of Columbia⁶, have legally recognized that marijuana has accepted medical use in treatment in the United States. Another eight (9) states⁷ 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. Iowa is one of

⁵ 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).

⁶ D.C. Law 18-210; D.C. Official Code, Title 7, Chapter 16B, §§ 7-1671.01 through 7-1671.13 (2010).

⁷ 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).

these nine (9) states. A tenth state is about to enact a cannabis oil law like the one in Iowa⁸.

This appeal involves a matter of public importance. See Ruling and Order Respondent's Motion to Dismiss the Petition for Judicial Review, Olsen v. Iowa Board of Pharmacy, No. CV 45505, Polk County District Court (October 23, 2013), at page 5, attached hereto as **Exhibit #9**:

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. It would appear that on the face of the Petition, and applying the standards as set out by the Iowa Supreme Court for the review of a motion to dismiss, that the issue has one of public importance.

It is absolutely critical that the Board fulfill its statutory obligation to act in an advisory role to the Iowa legislature at this time and while this issue is evolving.

Iowa Code Chapter 17A gives any interested party the right to appeal from decisions made by the Board in regard to the scheduling of controlled substances.

This petition for judicial review is an appeal from the November 6, 2013, decision of the Iowa Board of Pharmacy not to recommend the rescheduling or removal of marijuana from Schedule I of the IUCSA in 2014 despite the fact the

⁸ Missouri, House Bill 2238, Signed by House Speaker and Senate President Pro Tem, and sent to Governor (May 30, 2014).

Board has already concluded that marijuana does not meet the criteria for listing in Schedule I of the IUCSA in 2010, and despite the fact the Board has not made any contrary finding that marijuana now meets the criteria for listing in Schedule I of the IUCSA since recommending the rescheduling of marijuana in 2010.

Jurisdiction, Parties & Venue

1. This is an action for judicial review as authorized by Iowa Code § 17A.19 which is part of the Iowa Administrative Procedures Act.
2. The name of the petitioner is Carl Olsen (“Olsen” hereafter).
3. Olsen resides at 130 E. Aurora Ave., Des Moines, Iowa 50313-3654.
4. The Iowa Board of Pharmacy (“Board” hereafter) is the agency named as the Respondent in this action.
5. The Board maintains its principal headquarters in Polk County, Iowa.
6. Subject matter jurisdiction and venue of this matter properly lies in Polk County, Iowa by virtue of Iowa Code § 17A.19(2).
7. This is an appeal from a final order by the Board dated November 6, 2013, indicating that it will not grant Mr. Olsen’s request to recommend the removal of marijuana from Schedule I of the Iowa Uniform Controlled Substances Act (“Act” hereafter). A true copy of the order is appended hereto, marked as **Exhibit #1** and by this reference is made a part hereof.

8. The action appealed from is the refusal of the Board to make a recommendation to the Iowa State General Assembly that marijuana be removed from Schedule I of the Act.

9. Mr. Olsen has exhausted his administrative remedies and this is an appeal from a final order of the respondent agency.

Allegations

10. On February 17, 2010, the Board made a unanimous ruling recommending that the Iowa Legislature remove marijuana from Schedule I of the Act, attached hereto as **Exhibit #2**.

11. Since the Board's unanimous ruling on February 17, 2010, the Board has not made any opposite recommendation that marijuana should not be removed from Schedule I of the Act.

12. The facts have not changed since the Board made its recommendation in 2010 and there are no facts in dispute in this case.

13. There is no disagreement between Olsen and the Board that medical evidence warrants a recommendation for reclassification or removal of marijuana from Schedule I.

14. Olsen agrees with the Board's decision in 2010 to recommend removing marijuana from Schedule I.

15. There is nothing for this court to decide regarding the sufficiency of the medical evidence.

16. Iowa Code § 124.203(2) requires that, “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.”

17. Because the Board still considers the evidence to support a finding that marijuana should be reclassified, the Board only has two options: recommend rescheduling of marijuana or recommend removal of marijuana from the list of controlled substances.

18. Doing nothing is not an option for the Board, unless facts have changed.

19. Because facts have not changed, the Board must either recommend the general assembly place marijuana in a different schedule or recommend that marijuana be removed from the list of controlled substances.

20. The Board’s final ruling on November 6, 2013, is incorrect, because it fails to quote Iowa Code § 124.203(2) accurately.

21. The Board incorrectly reads Iowa Code § 124.203(2) to provide a third option, doing nothing.

22. The statute says the Board must recommend rescheduling marijuana or removing marijuana from the list of controlled substances, and doing nothing is not a valid option.

23. The Board's final ruling on November 6, 2013, says, "if the board finds that any substance does not meet the definition of a Schedule I controlled substance, the Board shall recommend it's rescheduling to the legislature **as appropriate,**" which is not an accurate reading of the statute.

24. The Board incorrectly paraphrases the statute to support a decision to do nothing, when the statute requires the board to do one of two things, recommend rescheduling of marijuana or recommend removing marijuana from the list of controlled substances, as appropriate.

25. The full text of the statute reads as follows:

124.203. Substances listed in schedule I – criteria

1. 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:
 - 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 that any substance included in schedule I does not meet these criteria, it **shall** recommend that the general assembly place the substance in a different

schedule **or** remove it from the list of controlled substances, as appropriate.

Iowa Code § 124.203 (emphasis added).

26. The use of the word “or” in Iowa Code § 124.203(2) is defined in Webster’s Dictionary as, “<http://www.merriam-webster.com/dictionary/or> -used as a function word to indicate an alternative <coffee or tea> <sink or swim>, the equivalent or substitutive character of two words or phrases <lessen or abate>, or approximation or uncertainty <in five or six days>

27. The Board incorrectly interprets “as appropriate” in Iowa Code 124.203(2) to mean the statute does not require the Board to do anything, even though the word “shall” requires the Board to recommend the general assembly either “place the substance in a different schedule” or “remove it from the list of controlled substances.”

28. The Iowa General Assembly is composed of two annual sessions, beginning in odd numbered years.

29. It is not appropriate, necessary, or advisable for the Board to neglect its duty to recommend the general assembly place a substance in a different schedule or remove it from the list of controlled substances if that substance does not meet the criteria for Schedule I.

30. Because marijuana no longer meets all the criteria required by Schedule I of the Act the Board has a legal duty to recommend the general

assembly remove marijuana from Schedule I and either place it in a different schedule or remove it from control altogether. Iowa Code § 124.203(2).

31. The ruling of the Board is:

Iowa Code § 17A.19(10)(a).

Unconstitutional on its face because it violates due process for the board to ignore the provisions of 124.203(2).

Iowa Code § 17A.19(10)(b).

In violation of the law, because the Board has no authority to ignore 124.203(2).

Iowa Code § 17A.19(10)(c).

Based upon an erroneous interpretation of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency, because the Board has no discretion to disobey a statutory command.

Iowa Code § 17A.19(10)(d).

Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process, because the Board did not find that any facts have changed that would cast doubt on the validity of the unanimous decision it made in 2010 to recommend reclassification of marijuana.

Iowa Code § 17A.19(10)(h).

Inconsistent with the Board's prior practice or precedents, because the Board has not justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency. Pharmacy Board member Jim Miller said the 2010 ruling is precedent at a public hearing on rulemaking held on March 12, 2010.

Iowa Code § 17A.19(10)(j).

The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action, because the Iowa legislature required the Board to act in an advisory capacity when the

Act was created in 1971 and the Board is refusing to perform its duty to advise the legislature without any authorization from the legislature that it can stop acting in this advisory capacity.

Iowa Code § 17A.19(10)(k).

Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy, because the Board has no legal authority to withhold its advice from the legislature and the Board has a duty to protect the public interest by advising the legislature annually.

Prayer for Relief

WHEREFORE, the Petitioner prays for:

- A. A judgment setting aside the November 6, 2013, ruling of the Iowa Board of Pharmacy; and
- B. A declaratory ruling from this court, establishing that, as a matter of law, marijuana has “accepted medical use in treatment in the United States”; and
- C. A writ of mandamus requiring the Iowa Board of Pharmacy to perform its duty to recommend removal of marijuana from Schedule I of the Iowa Controlled Substances Act, Iowa Code Chapter 124, according to requirements of Iowa Code § 124.203.

Respectfully Submitted:

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

Affidavit of Service

State of Iowa)
) **SS:**
County of Polk)

I certify under penalty of perjury that on or before June 16, 2014, and in compliance with the notice requirements of Iowa Code Section 17A.19(2), I effected service of notice of this action by mailing copies of this petition to all parties of record in the underlying case before the Iowa Board of Pharmacy addressed to the parties or their attorney of record as follows:

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

Meghan Gavin
Assistant Iowa Attorney General
1305 E. Walnut Street
Des Moines, IA 50319

/s/ Carl Olsen
Carl Olsen, Pro Se Petitioner

BEFORE THE IOWA BOARD OF PHARMACY

PETITION FOR RECOMMENDATION)	
TO REMOVE MARIJUANA FROM)	RULING ON PETITION
SCHEDULE I OF THE IOWA UNIFORM)	FOR AGENCY ACTION
CONTROLLED SUBSTANCE ACT)	

On July 30, 2013, Carl Olsen filed a Petition for Agency Action with the Iowa Board of Pharmacy. The Petition requested that the Board recommend to the Iowa General Assembly that marijuana be rescheduled to a Schedule II controlled substance thereby allowing it to be prescribed for medicinal purposes.

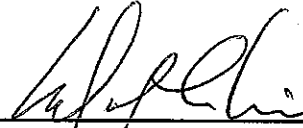
The Board considered the Petition at its bimonthly meeting on November 5 and 6, 2013. The Board voted to deny the Petition. Iowa law provides:

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 sections 124.204, 124.206, 124.208, 124.210, or 124.212, *which it deems necessary or advisable.*

Iowa Code § 124.201(1) (2013) (emphasis added). Iowa Code section 124.203 further provides that if the Board finds that any substance does not meet the definition of a Schedule I controlled substance, the Board shall recommend its rescheduling to the legislature *as appropriate*. *Id.* § 124.2013(2) (emphasis added).

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.



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
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State of Iowa

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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.



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.

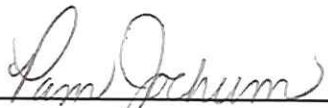
Sec. 9. NEW SECTION. 124D.8 Repeal.

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


Senate File 2360, p. 7

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

THE REGISTER'S EDITORIALS

Iowa officials now need to expand marijuana oils to other sufferers

Iowa parents will no longer face prosecution if they purchase a special marijuana extract for their severely epileptic children. Gov. Terry Branstad signed a bill into law, which takes effect July 1, that allows parents to buy a cannabis oil that may lessen seizures. For that, he and the Legislature deserve credit.

"This bill received tremendous support and truly shows the power of people talking to their legislators and to their governor about important issues to them, to their families and to their children," Branstad said shortly before he signed Senate File 2360.



Sally Gaer advocates for the legalization medical marijuana in February.

REGISTER PHOTO

Parents did work relentlessly the past few months to gain support from lawmakers. And that did make all the difference in swaying elected officials. However, this law is only the first step toward changes Iowa needs to make.

The parents who will be legally allowed to purchase the cannabis oil still face obstacles. They need a recommendation from an Iowa neurologist and will have to travel to other states with less restrictive marijuana laws to obtain the oil. They may face waiting lists.

Also, the change in law benefits only a small group of Iowans with the most organized lobbying efforts. Other sick Iowans should have legal access to marijuana extracts, too. These include people

with painful and debilitating conditions like cancer, spinal cord injuries and severe arthritis, who may benefit from the drug. But if these people obtain cannabis oil, they will still be considered criminals in this state.

Benton Mackenzie, for example, has been diagnosed with angiosarcoma, a cancer of the blood vessels. The 48-year-old was growing his own marijuana to make cannabis oil to shrink skin lesions caused by the disease. After the plants were confiscated from his parents' home in Long Grove last summer, his lesions have grown enormous and his health has deteriorated.

Mackenzie and his wife are both charged with felony drug possession. His 73-year-old parents are charged with hosting a drug house. His son is charged with misdemeanor possession, and his friend is charged in the drug conspiracy. A Scott County district judge recently ruled Mackenzie won't be able to use his illness as a defense.

"At least the state is now recognizing, with a law, that marijuana has medicinal value," said Mackenzie.

Yes, but the state has much more work to do on this issue.



MARIJUANA CASE

Mackenzie family's marijuana trial date set



JUNE 05, 2014 4:30 AM • BY [BRIAN WELLNER](#)

A judge has set a trial date for an Iowa man suffering from terminal cancer after appointing a lawyer to defend the man against marijuana charges.

Scott County District Judge Henry Latham said Wednesday that the trial of Benton Mackenzie will begin June 30. He appointed Joel Walker to defend the man.

The 48-year-old Mackenzie, who has been diagnosed with angiosarcoma, appeared in the courtroom in a wheelchair.

He is charged in a conspiracy to grow marijuana along with his wife, Loretta Mackenzie, and his friend, Stephen Bloomer.

Scott County Sheriff's deputies say they searched Mackenzie's parents' Long Grove property and found 71 marijuana plants last summer.

Mackenzie says he needed all of those plants to extract enough cannabis oil for daily treatments of his cancer and to relieve symptoms of the disease.

His 22-year-old son, Cody Mackenzie, was charged with misdemeanor possession after deputies said they found marijuana in his bedroom. Benton Mackenzie's 73-year-old parents, Charles and Dorothy Mackenzie, are charged with hosting a drug house.

They all appeared in a Scott County courtroom Wednesday. Each had a different attorney present except for Benton Mackenzie.

Lori Kieffer-Garrison was representing him until Friday, when the Iowa Supreme Court suspended her law license for six months, citing multiple violations of the Iowa Rules of Professional Conduct.

The Mackenzies and Bloomer were set to go to trial this week before Kieffer-Garrison's suspension put the case on hold so a new attorney could be appointed for Benton Mackenzie.

Davenport attorney Murray Bell said Friday that Kieffer-Garrison called him about representing Benton Mackenzie. Latham said Wednesday that Bell has declined to do so.

Latham first asked David Treimer to represent Benton Mackenzie, and Treimer appeared at Wednesday's hearing.

"I have no confidence in this attorney," Benton Mackenzie said of Treimer. He said Treimer

EXHIBIT #5 - PETITION FOR JUDICIAL REVIEW JUNE 16, 2014
FILED 2014 JUN 17 8:50 PM POLK CLERK OF DISTRICT COURT

represented his wife in a prior drug case.

Both Benton and Loretta Mackenzie were convicted of growing marijuana in 2011.

"Now this is coming back to me," Treimer said. "I represented his wife. They alleged they had a problem with my representation. It was for another marijuana case. I see how it could be a conflict of interest."

After a five-minute break, Latham returned, saying that he had called Walker and that Walker agreed to represent Benton Mackenzie.

After the hearing, Benton Mackenzie said Treimer didn't believe his wife's defense in 2011 — that she was only his caretaker and took no part in growing the marijuana.

She is arguing the same defense this time.

Benton Mackenzie also said that in 2011, like last year, he was growing the marijuana to treat his cancer.

Benton and Loretta Mackenzie have said they regret having pleaded guilty to the 2011 charges.

SIOUXLAND HEALTH

HELP OR HAZARD?

New medical cannabis law raises concerns in Siouxland

New medical cannabis law raises concerns in Siouxland

4 HOURS AGO • [DOLLY A. BUTZ](#)
DBUTZ@SIOUXCITYJOURNAL.COM

SIOUX CITY | A new law that will allow seizure sufferers in Iowa to use a marijuana extract to help control their disease has a local doctor worried about the possible risks to children.

Iowans who can legally possess up to 32 ounces of [cannabidiol oil starting July 1](#) will have to buy the product from out-of-state dispensaries and dealers, and there's no way to know what kinds of impurities it may contain, said Mercy Medical Center

emergency room physician Thomas Benzoni.

"More and more we're seeing toxic agents seep into drugs," Benzoni said.

Some cannabidiol contains potentially deadly oil-based insecticides used to treat cannabis plants.

"When something is extracted from cannabis or any plant with oil, then anything that is oil-soluble will be in the oil portion," he said. "Many substances that are very toxic are oil-soluble."

Given the way Iowa's law is configured, allowing patients to possess the medication but requiring them to obtain it out of state, Benzoni said he believes cannabis will "do plenty of harm to children" and adults alike.

The federal Drug Enforcement Administration classifies marijuana and its components as a Schedule I substance, meaning it is illegal and not regulated by the Food and Drug Administration.

NOWHERE TO GO?

Gov. Terry Branstad signed the [Medical Cannabidiol Act](#) into law May 30 at the urging of parents who believe the oil can reduce the frequency of seizures and in some cases eliminate them.

The law allows adults and children who suffer from uncontrollable epilepsy to have the drug in Iowa, where other forms of marijuana are illegal.

Exhibit #6 Petition for Judicial Review June 16, 2014

FILED 2014 JUN 17 8:50 PM POLK COUNTY CLERK OF DISTRICT COURT

The law requires patients with "intractable epilepsy" to get a written recommendation from a neurologist who has treated them for at least six months. Neurologists submit the recommendation to the Iowa Department of Public Health, which then permits the Iowa Department of Transportation to issue a cannabidiol registration card to patients who are at least 18 years old or, in the case of a minor patient, a primary caregiver.

Neurologists have the sole authority to recommend the use and the amount of cannabidiol oil, which can be taken by mouth or rubbed into the skin. The oil is free of THC, the mind-altering ingredient in the cannabis plant.

Once the new law goes into effect, Iowa will be one of 23 states that have decriminalized the drug for medical use.

Some states, including Minnesota, have empowered state regulators to oversee the growing of medical cannabis and its distribution. The law signed by Minnesota Gov. Mark Dayton in May requires the state's commissioner of health to register two in-state marijuana manufacturers by December.

Iowa residents won't be able to buy medical marijuana in Minnesota. The state's law restricts access to Minnesota residents diagnosed with qualifying conditions and registered with the Department of Health.

Iowans can travel to Colorado to buy marijuana and marijuana products from a licensed retail shop but can't legally take it out of the state. According to the Colorado Department of Public Health & Environment, there is no difference between marijuana sold for retail and medical use.

Anyone caught traveling with marijuana through Nebraska, which is between Colorado and Iowa but where the substance is illegal, faces possible arrest.

"Nebraska law has not changed, and marijuana in any form remains illegal," said Deb Collins, spokeswoman for the Nebraska State Patrol.

Only the states of Arizona, Delaware, Maine, Michigan, Nevada, New Hampshire and Rhode Island offer reciprocity for patients with out-of-state medical marijuana identification cards.

Tyler Brock, Siouxland District Health Department deputy director, said local public health offices won't be involved in issuing registration cards for Iowans.

"That's probably why we haven't had much conversation with this at a local level," he said.

CALLS FOR MORE TESTING

Steve Fox, 61, of Sioux City, has lived with epilepsy most of his life. A native of Homer, Neb., he has been on multiple medications to help control seizures. He had the first of many brain surgeries at the age of 8 months.

Fox established the Siouxland Epilepsy Support Group in 2004. Four years later, the local organization merged with the Epilepsy Foundation of America's North/Central Illinois, Iowa and Nebraska chapter. He hopes to re-energize a local support group.

Fox agreed the prospect of legalized cannabidiol oil treatment may give parents a glimmer of hope for their children's health.

Exhibit #6 Petition for Judicial Review June 16, 2014

"I think it's a new solution," he said.

However, he said more testing needs to be done to make sure it's safe and effective. He said he doubted local physicians would be quick to suggest the oil as a treatment option.

A statement from the Epilepsy Foundation's regional chapter supports the rights of patients and families living with seizures and epilepsy to access medical marijuana but contends, "There is still a lot we don't know about the medical use of marijuana for epilepsy."

"The Epilepsy Foundation calls for an end to Drug Enforcement Administration restrictions that limit clinical trials and research into medical marijuana for epilepsy," the statement by foundation president and CEO Philip Gattone and board chairman Warren Lammert said.

"The Epilepsy Foundation believes that an end to seizures should not be determined by one's ZIP code."

'COMPASSIONATE USE'

Justin Johnston, 37, of Sioux City, developed epilepsy at age 15. His treatment has included myriad medications to which his brain eventually becomes accustomed. Although he wasn't too familiar with Iowa's new cannabidiol law, he said any new treatment option would be beneficial.

"I think it would be a great idea if it would make a younger person much better," he said.

Linda Kalin, executive director of the Sioux City-based Iowa Poison Control Center, said the federal Schedule I designation hinders medical researchers from performing controlled studies on cannabidiol oil.

"This is compassionate use. It seems reasonable," she said of the law. "We do need more studies. We as a country need objective data from randomized trials."

In the meantime, Benzoni cautioned that no one really knows what's in a vial of marijuana extract made or sold by a dispensary or a lone dealer.

He said he would like to see more studies being done on cannabidiol oil to learn what it contains and whether it offers any medical benefits.

"If people have a scientific inquiry about it, go ahead and study it, but be willing to accept the conclusion before the scientific study is done," he said. "People demand a certain answer before they do the study. If they don't agree with the results of the study, then they say, 'The study's wrong.'"

Journal staff writer Molly Montag contributed to this report.

About the law

Who is affected: People suffering from an epileptic seizure disorder for which standard medical treatment doesn't offer relief or results in harmful side effects.

What they can possess: 32 ounces of cannabidiol oil in Iowa beginning July 1.

Requirements: Patients need a written recommendation from a licensed neurologist to

Exhibit #6 Petition for Judicial Review June 16, 2014

obtain a cannabidiol registration card issued by the Iowa Department of Public Health through the Iowa Department of Transportation.

What the cards do: Given to patients 18 years of age and a primary caregiver if the patient is a minor. The law requires patients to buy the drug from out-of-state sources.

Your turn

What do you think? Take part in our Journal poll about cannabidiol oil at siouxcityjournal.com.

Add your voice to our Opinion page by emailing letters@siouxcityjournal.com.



Iowa families face treacherous trip to get cannabis oil

UPDATED 7:32 AM CDT May 02, 2014

DES MOINES, Iowa -

While the Iowa legislature has approved a bill to allow cannabis oil's use for some patients, the oil will not be sold in Iowa.

[Watch this video forecast](#)

Families will be forced to drive to a state where it is available to get it. That means driving hundreds of miles likely to Colorado and then transporting it back through states where it is not legal to possess, like Nebraska.

Amanda Gregory's six-year-old daughter suffers from a severe form of the neurological disorder.

"Five, six months ago, got diagnosed with Raine 20 Chromosome, which is an extremely rare chromosome disorder which makes her have seizures daily," said Gregory.

If Gov. Terry Branstad signs the bill just approved by the Legislature Thursday, the Gregory family will soon travel to Colorado to obtain up to 32 ounces of cannabis oil -- a last-resort treatment for seizures.

But their journey out of Colorado en route to Iowa may come with a roadblock. Law enforcement in one state may stop you for transporting a product that is legal in another.

"They would still be in possession of a controlled substance one, which is considered not approved in the eyes of the DEA," said Rep. John Forbes.

A representative of the Nebraska State Patrol told KCCI Thursday that any form of marijuana is illegal in their state.

Republican representative and former state trooper Clel Baudler told KCCI caregivers will get a pass in Nebraska as long as they have the proper paper work.

"If they got stopped or they had a breakdown or an accident and they had this product with very little THC, they wouldn't get in trouble," said Baudler.

That would be another relief for Gregory who wouldn't let the threat of a misdemeanor keep her from bringing Colorado cannabis oil back to Altoona.

"Do I got to Colorado and get the things that my child needs or do I put my job on the line, which? My daughter is more important than my job," said Gregory.

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IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

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

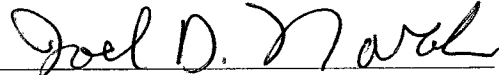
² Iowa Code section 124.201 requires that the Board consider these factors before making a rescheduling recommendation to the legislature. The Board is apparently of the position that these factors must also be considered before recommending rescheduling or removal pursuant to the terms of Iowa Code 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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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,

Petitioner,

vs.

IOWA BOARD OF PHARMACY,

Respondent.

CASE NO. CVCV045505

**RULING AND ORDER ON
RESPONDENT'S MOTION TO DISMISS
PETITION FOR JUDICIAL REVIEW**

Now on Aug 2, 2013, this matter came before the Court upon the Respondent's Motion to Dismiss the Petition for Judicial Review. The Petitioner was personally present and represented by his counsel, Mr. Collin C. Murphy. The Iowa Board of Pharmacy was present by Iowa Assistant Attorney General Meghan Gavin. The Court, having reviewed the Respondent's Motion to Dismiss the Petition for Judicial Review, the resistance thereto, and the entire court file, makes the following findings and order:

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 by the ruling on Petition for Agency action. That ruling further stated that the Iowa Board of Pharmacy considered the Petition and supporting documentation at its bimonthly meeting on November 8 and 9, 2012.

The ruling went on to state that 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).

In the Respondent's Motion to Dismiss the Petition for Judicial Review, the Iowa Board of Pharmacy states 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 states that a remand at this point would be too late

as the legislative session has ended and, therefore, the petition is moot and should be dismissed.

Petitioner's resistance to the Motion to Dismiss Petition for Judicial Review states 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 states 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 alleges 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 goes 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.

Regarding motions to dismiss, the Court may grant a motion to dismiss only if the petition shows no possible right of recovery under the facts. *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003). A motion to dismiss will rarely succeed. *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). When considering a motion to dismiss, courts assess the petition "in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in plaintiff's favor." *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa Ct. App. 1998) (citation omitted). A petition must contain factual allegations sufficient to provide the defendant

with “fair notice” of the claim asserted. *Id.* A petition satisfies the “fair notice” standard “if it informs the defendant of the incident giving rise to the claim and of the claims general nature.” *Id.* “The only issue when considering a motion to dismiss is the “petitioner’s right of access to the district court, not the merits of his allegations.” *Hawkeye Food Service Distribution, Inc. v. Iowa Educator’s Corp.*, 812 N.W.2d 600, 609 (Iowa 2012) (quoting *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001); *Cutler v. Klass, Whicher and Mishne*, 473 N.W.2d 178, 181 (Iowa 1991) (“Both the filing and the sustaining [of motions to dismiss] are poor ideas.”)

In regard to the standards for mootness, the Iowa Supreme Court has stated that:

An appeal is moot if it no longer presents a justiciable controversy because the contested issue has become academic or nonexistent. The test is whether the court’s opinion would be of force or effect in the underlying controversy. As a general rule, we will dismiss an appeal when judgment, if rendered, will have no practical legal affect upon the existing controversy.

There is an exception to this general rule, however, where matters of public importance are presented and the problem is likely to recur. Under these circumstances, our court has discretion to hear the appeal. An important factor to consider is whether the challenged action is such that often the matter will be moot before it can reach an appellate court.

In re M.T., 625 N.W.2d 702, 704-705 (Iowa 2001) (internal citations, quotations, and alterations omitted).

In considering the first prong of the test of whether there should be an exception to the mootness rule, the Court considers whether or not the question presented is one of public importance. The Court takes the Petition for Judicial Review filed by the Petitioner at face value as the Court must assess the Petition in the light most favorable to the Plaintiff with all doubts

and ambiguities resolved in the Plaintiff's favor. In doing this the Court does not render a decision on the merits of the Petition but rather whether or not the Petitioner has the right of access to the district court. 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. It would appear that on the face of the Petition, and applying the standards as set out by the Iowa Supreme Court for the review of a motion to dismiss, that the issue has one of public importance. Added to this is the Iowa Board of Pharmacy's duty under Section 124.203 of the Code of Iowa that the Board shall recommend to the General Assembly that it place in Schedule I any substance 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 finds that the issue presented does contains one of public importance as stated above, but also is capable of repetition but evading review. The time periods in which the Petition was filed first with the Iowa Board of Pharmacy and the final decision by the Iowa Board of Pharmacy severely constrained the time period for which the Petitioner had available to him to seek judicial review. Based upon the timing of the Iowa Board of Pharmacy's ruling and the Iowa legislative session, the Court finds that the capable of repetition but evading review element has been met.

The Court, therefore, finds that the motion to dismiss is hereby denied. The Court finds that the issue is not moot. The Petition for Judicial Review presents a justiciable controversy regarding agency action; that it further involves matters of public importance, when assessing the petition in the light most favorable to the petitioner with all doubts and ambiguities resolved in the petitioner's favor, and is capable of repetition but evading review.

Dated this 22nd day of October, 2013.

SCOTT D. ROSENBERG
Judge, 5th Judicial District of Iowa

Copies to:

Carl Olsen
Meghan Gavin



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". The signature is written in black ink and is positioned above a horizontal line.

Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa