ELECTRONICALLY FILED AUG 24, 2015 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

CARL OLSEN, Petitioner-Appellant, v. IOWA BOARD OF PHARMACY, Respondent-Appellee.	)	SUPREME COURT NO. 14-2164

APPEAL FROM THE IOWA DISTRICT COURT

FOR POLK COUNTY

HONORABLE ELIZA OVROM, JUDGE

PETITIONER-APPELLANT'S FINAL BRIEF

AND REQUEST FOR ORAL ARGUMENT

CARL OLSEN
130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-343-9933
carl-olsen@mchsi.com
Appellant, Pro Se

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THE IOWA BOARD OF PHARMACY HAD NO DUTY TO RECOMMEND RECLASSIFICATION OF MARIJUANA.

AUTHORITIES

Iowa R. App. P. 6.1101(2)

Iowa Code Chapter 124

Iowa Code Chapter 17A.19

Birchansky Real Estate, L.C. v. Iowa Dept. of Public Health, 737 N.W.2d 134 (Iowa 2007)

Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106 (Iowa 1985)

State v. Bonjour, 694 N.W.2d 511 (Iowa 2005)

Ward v. Iowa Dept. of Transp., 304 N.W.2d 236 (Iowa 1981)

U.S. Constitution, Article IV, Section 1

21 U.S.C. §§ 801-971

Uniform Controlled Substances Act

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

Gonzales v. Raich, 545 U.S. 1 (2005)

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

James v. Costa Mesa, 700 F.3d 394 (9th Cir. 2012)

United States v. Pickard, No. 2:11-cr-449-KJM, 2015 U.S. Dist. LEXIS 51109 (Decided April 17, 2015)

STATEMENT OF THE CASE

I. Nature of the Case:

This is an appeal from the Polk County District Court's December 10, 2014, Ruling (App. 133-143), dismissing Carl Olsen's Petition for Judicial Review (App. 20-66).

The District Court's Ruling upheld the Iowa Board of Pharmacy's November 6, 2013, denial of Carl Olsen's Petition for Agency Action. App. 18-19.

The Honorable Eliza Ovrom presided over all relevant proceedings.

II. Course of Proceedings:

On July 30, 2013, Carl Olsen filed a Petition for Agency Action (App. 2-17), with the Iowa Board of Pharmacy ("the Board") asking the Board to initiate the reclassification of marijuana according to the procedures set forth in the Iowa Uniform Controlled Substances Act ("the Act"). Iowa Code §§ 124.101-602, 1971 Iowa Acts 305, Chapter 148 (S.F. 1) (July 1, 1971). The Petitioner referenced the following sections of the Act where marijuana is identified: Iowa Code §§ 124.204(4)(m), 124.204(7), and 124.206(7)(a) (2013). App. 3, 137, 138. The Petitioner referenced the following sections of the Act as authority for the Board's action: Iowa Code §§ 124.201, 124.203, and 124.205 (2013). App. 21. The Board denied the Petition for Agency Action on November 6, 2013. App. 18-19.

In denying the Petition, the Board stated that: (1) the Board had recommended the reclassification of marijuana in 2010; (2) the legislature had considered marijuana's classification in 2011-2012; (3) the legislature was considering marijuana's classification again in 2013; and (4) it was not "necessary or advisable" to make a recommendation for 2014. See Exhibit #1 attached to the Petition for Judicial Review. App. 34-35.

On June 17, 2014, Carl Olsen filed a Petition for Judicial Review with the Iowa District Court pursuant to Iowa Code § 17A.19 (2013). App. 20-66. The District Court dismissed the Petition on December 10, 2014. See Ruling on Petition for Judicial Review, December 10, 2014. App. 133-143.

III. Facts:

The legislative history of marijuana's scheduling is set forth in a dissenting opinion in State v. Bonjour, 694 N.W.2d 511, 516-17 (Iowa 2005) (Wiggins, J. and Lavorato, C.J. dissenting). When the Iowa Uniform Controlled Substances Act was enacted in 1971, marijuana was placed in schedule 1 of the Act. The legislature placed two conditions on schedule 1. Substances in schedule 1 must have: (1) high potential for abuse; and (2) no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical

supervision[1]. Iowa Code § 124.203(1) (2013). In 1971 marijuana did not have any accepted medical use in any state in the United States. However, prior to 1971, marijuana had been widely accepted for medical use in treatment in the United States. *See* James v. Costa Mesa, 700 F.3d 394, 409 (9th Cir. 2012) (Berzon, J., dissenting):

> First, while California in 1996 became the first of the sixteen states that currently legalize medical marijuana, the history of medical marijuana goes back much further, so that use for medical purposes was not unthinkable in 1990. At one time, "almost all States ... had exceptions making lawful, under specified conditions, possession of marihuana by ... persons for whom the drug had been prescribed or to whom it had been given by an authorized medical person." *Leary v. United States*, 395 U.S. 6, 17, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969).

The Polk County District Court has previously determined that, "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] App. 57.

---

[1] The U.S. Drug Enforcement Administration and the U.S. Court of Appeals have found that accepted medical use and safety for use under medical supervision are not separate analytical questions. *Alliance for Cannabis Therapeutics v. Drug Enforcement Administration*, 930 F.2d 936, 940 n.4 (D.C. Cir. 1991); Docket No. 86-22, Marijuana Scheduling Petition, Drug Enforcement Administration, Final Order. 57 Fed. Reg. 10499, 10504 (Thursday, March 26, 1992) ("Safety cannot be treated as a separate analytical question").

[2] See *McMahon v. Iowa Board of Pharmacy*, No. CV 7415, Ruling on Petition for Judicial Review, Polk County District Court, April 21, 2009, at page 4 note 1.

In 2013 nineteen (19) states had accepted the medical use of marijuana in treatment in the United States.[3] In 2010, with the consent of Congress, the medical use of marijuana was accepted in the federal jurisdiction of the District of Columbia (DC)[4]. As noted in the Board's denial of the Petition for Agency Action, on February 17, 2010, the Board had also found there was accepted medical use of marijuana in Iowa. App. 36-37.

At the time the Petitioner filed the Petition for Agency Action, the Petitioner was unaware that "natural dronabinol (derived from the cannabis plant)" products are in schedule 3 in Iowa. Motion for Judicial Notice, Exhibit #1 (App. 121-122). Iowa Code § 124.208(9)(b), 2008 Iowa Acts 9, Chapter 1010 § 4 (H.F. 2167)

---

[3] 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); 22 Maine Revised Statutes § 2383-B (1999); Massachusetts Chapter 369 of the Acts of 2012 (2012); Michigan Compiled Laws, Chapter 333, §§ 333.26421 through 333.26430 (2008); 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).

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

(March 5, 2008)[5]. Because a marijuana plant is necessary to make natural dronabinol, this is an accepted medical use for marijuana in Iowa that is inconsistent with schedule 1.

ROUTING STATEMENT

Iowa Rule of Appellate Procedure 6.1101(2) outlines the criteria for determining whether a case will be retained by the Iowa Supreme Court or transferred to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(2). Petitioner-Appellant asks that this case be retained by the Iowa Supreme Court because it: ("a") presents a substantial question involving state and federal statutory language found in Iowa Code § 124.203(1)(b) (2013); ("b") presents a substantial issue involving published decisions of the federal courts; ("c") presents a substantial issue of first impression in the Iowa Supreme Court; ("d") presents a fundamental and urgent issue of broad public importance requiring prompt or ultimate determination by the Iowa Supreme Court; and ("f") presents a substantial question of enunciating legal principles. Iowa R. App. P. 6.1101(2)(a), (b), (c), (d), and (f).

[5] Naturally derived dronabinol products are in federal schedule 1. See, 21 C.F.R. § 1308.11(d)(31) (2013); 21 C.F.R. § 1308.13(g) (2013); and see 75 Fed. Reg. 67054 (2010) (proposed rule to reclassify naturally derived dronabinol products which was not yet final as of November 6, 2013, and is still not final as of today).

ARGUMEMT

I. The District Court Erred in Ruling the Board had no Duty to Recommend Reclassification of Marijuana.

A. Error Preservation, Standard of Review, and Scope of Review.

Petitioner preserved error. On June 17, 2014, Petitioner filed an Amended Petition for Judicial Review ("Petition for Judicial Review"). App. 20-66. On August 14, 2014, Petitioner filed a Petitioner's Brief in Support of Petition for Judicial Review ("Petitioner's Brief"). App. 67-79. On September 25, 2014, Petitioner filed a Petitioner's Reply Brief in Support of Petition for Judicial Review ("Petitioner's Reply Brief"). App. 80-93. In those three filings, as well as argument during the hearing on October 24, 2014, Petitioner generally pressed the arguments raised here. App. 94-114.

The Petitioner argued that marijuana has accepted medical use in treatment in the United States as a matter of law and by a previous decision of the Board. Petition for Judicial Review at p. 8 (App. 27); Petitioner's Brief at p. 13 (App. 79); Tr. At pp. 2-3 (App. 95-96) (arguing the Board's previous precedent on February 17, 2010, finding that marijuana has medical use in Iowa is binding unless the Board cites evidence to the contrary – referencing Iowa Code § 17A.19(10)(h) (2013)); Petition for Judicial Review at p. 5 (App. 24); Petitioner's Brief at p. 5 (App. 71); Tr. at p. 3 (App. 96) (arguing that state laws accepting the medical use

of marijuana are indisputable proof that marijuana has accepted medical use in treatment in the United States because the Board has no discretion to find that marijuana is not accepted for medical use in those other states – referencing Iowa Code § 17A.19(10)(c) (2013)); Petition for Judicial Review at pp. 8-11 (App. 27-30); Petitioner's Brief at pp. 4-5 (App. 70-71); Petitioner's Reply Brief at pp. 8-9 (App. 88-89) (arguing the board has no discretion under Iowa Code § 124.203(2) (2013) to refuse action if there is undisputed evidence showing that marijuana has accepted medical use in treatment the United States – referencing Iowa Code § 17A.19(10)(c) (2013)).

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 on 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).

B. States have Accepted the Medical Use of Marijuana

The Petitioner presented state laws showing that over the course of seventeen (17) years, since California became the first state to accept the medical use of marijuana in treatment in the United States, a total of nineteen (19) states had enacted state laws accepting the medical use of marijuana in treatment in the United States, as well as the federal jurisdiction of the District of Columbia (DC) (with Congressional consent). Petition for Agency Action at p. 6 (App. 7); Petitioner's Reply Brief at p. 4 (App. 83). In the Board's final ruling on November 6, 2013, the Board did not explain whether marijuana's "accepted medical use in treatment" in any, or all, of these nineteen (19) states and the District of Columbia has any relationship to that requirement in all five of the schedules in Iowa Code §§ 124.203(1)(b) (schedule I), 124.205(1)(b) (schedule II), 124.207(1)(b) (schedule III), 124.209(1)(b) (schedule IV), and 124.211(1)(b) (schedule V) (2013). The Board should have accepted or rejected the Petitioner's argument that these state

laws prove conclusively that marijuana is currently misclassified in Iowa as a matter of law and explained its reasons for doing so.

C. The Board has Accepted the Medical Use of Marijuana

The Board found that marijuana has medical use on February 17, 2010. Petition for Judicial Review, Exhibit #2 (App. 36-37). The Board hasn't found otherwise since then, so the Board should continue to recommend reclassification.

D. Iowa has Accepted the Medical Use of Marijuana

On March 5, 2008, the Iowa legislature placed a marijuana derivative ("natural dronabinol") in Iowa schedule 3. Motion for Judicial Notice, Exhibit #1 (App. 121-122). Iowa Code § 124.208(9)(b), 2008 Iowa Acts 9, Chapter 1010 § 4 (H.F. 2167) (March 5, 2008)[6]. This derivative is not being manufactured in Iowa because schedule 1 makes it impossible to grow the marijuana to make it.

E. The Board has a Duty to Recommend Scheduling Changes

The Iowa Supreme Court has previously acknowledged the importance the Iowa Board of Pharmacy has in relationship to marijuana's scheduling in Iowa in State v. Bonjour, 694 N.W.2d 511 (Iowa 2005).

> That procedure is to defer to the Board of Pharmacy Examiners, which is far better equipped than this court – and the legislature, for that matter – to make critical decisions regarding the medical

[6] See footnote 1.

> effectiveness of marijuana use and the conditions, if any, it may be used to treat.

Id. at 514.

While the final decision on whether to reclassify a controlled substance is the legislature's ultimate responsibility, the Board cannot simply ignore its responsibilities under the law. The title of Iowa Code § 124.201 is the Board's "Duty to Recommend Changes in Schedules." It would not be much of a duty if the Board isn't required to do anything at all.

The Board is more qualified than legislators to recommend scheduling, the Board is more qualified than courts to recommend scheduling, and the Board's role in determining proper classification of controlled substances is clearly defined in the statute. And, yet, the District Court found the Board had no duty to recommend a change to the schedules in the face of uncontested facts. It would be hard to imagine a more compelling circumstance for making a scheduling recommendation. Increase in marijuana's acceptance for medical use in treatment is occurring rapidly. In contrast, there isn't any other substance in schedule 1 that has ever had any accepted medical use in treatment in even a single state. What other states accept for medical use is relevant because of the legislature's use of the phrase "in the United States" in Iowa Code §§ 124.203(1)(b) (schedule I), 124.205(1)(b) (schedule II), 124.207(1)(b) (schedule III), 124.209(1)(b) (schedule IV), and 124.211(1)(b) (schedule V) (2013).

Iowa Code §§ 124.201 through 124.212 (2013) define an advisory role for the Iowa Board of Pharmacy. For the Board to suggest that its advice is not wanted or needed because the legislature considered the issue in 2011, 2012, and was currently considering the issue again in 2013, is contrary to the purpose and meaning of the Act when read as a whole. None of bills that were pending in the legislature that the Board cited as justification for doing nothing would have removed or lessened this advisory role of the Board, and none of these bills became law. See United States v. Pickard, No. 2:11-cr-449-KJM, 2015 U.S. Dist. LEXIS 51109, slip op. at 3 (E.D. Cal. April 17, 2015).

> However, the court declines to take judicial notice of H.R. 5762, as it does not have the force of law. See *Davis v. United States*, 569 F. Supp. 2d 91, 98 (D.D.C. 2008) (declining to take judicial notice of a proposed bill because it does not carry the force of law and hence, is irrelevant).

F. Federalism is an Integral Part of the Act

Federalism is an integral component of the Iowa Uniform Controlled Substances Act because the specific condition for schedule 1 in the Iowa act is the same as the specific condition for federal schedule 1 in the Federal Controlled Substances Act. See, 21 U.S.C. §§ 801-971, Public Law 91-513, 84 Stat. 1236 (October 27, 1970). The phrase "accepted medical use in treatment in the United States" has the same meaning in both acts. See, Iowa Code § 124.203(1)(b); 21 U.S.C. § 812(b)(1)(B). The United States is a union of states. When nineteen of

these states accept the medical use of a substance classified as having no accepted medical use in treatment in the United States, it requires action by the Board, either explaining why these state laws are not relevant to the condition placed on schedule 1 by our legislature, or recommending a change in the classification.

Because federalism is involved, careful analysis by the Court is required. The Petitioner argued that the Board, as well as the District Court, had a duty to recognize, as a matter of law, that marijuana has "accepted medical use in treatment in the United States" as that phrase is used in Iowa Code §§ 124.203(1)(b) (schedule I), 124.205(1)(b) (schedule II), 124.207(1)(b) (schedule III), 124.209(1)(b) (schedule IV), and 124.211(1)(b) (schedule V) (2013), and in the United States Code, Title 21 §§ 812(b)(1)(B) (schedule 1), 812(b)(2)(B) (schedule 2), 812(b)(3)(B) (schedule 3), 812(b)(4)(B) (schedule 4), and 812(b)5(B) (schedule 5). This is a fundamental principle of federalism embedded in the U.S. Constitution, Article IV, Section 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State").

The Board, as well as the District Court, refused to make any analysis whatsoever of the significant change in circumstance that had occurred over the previous seventeen (17) years. Nineteen (19) states had accepted the medical use of marijuana during that time. If the Board thought that state laws are completely irrelevant to marijuana's classification as a substance with no accepted medical use

in treatment in the United States, the Board had an obligation at the very least to say so and explain why. A plain reading of the statutory language would lead anyone to believe that state laws are relevant and that marijuana does, in fact, have accepted medical use in treatment in the United States. If the Board has no other explanation, then the plain reading of the statute is the meaning of the statute.

In 1987, the U.S. Court of Appeals for the First Circuit analyzed the phrase "accepted medical use in treatment in the United States" finding that recognized medical use in every state, or FDA (U.S. Food and Drug Administration) approval for interstate marketing, is not required. Grinspoon v. DEA, 828 F.2d 881 (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.

Id. at 886.

> 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.

Id. at 887. The best possible evidence of intrastate medical use of marijuana is a state law defining marijuana as medicine.

In 2005, the U.S. Supreme Court, while upholding the federal government's authority to regulate marijuana, expressed doubt that marijuana is classified correctly. Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005):

> We acknowledge that evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I.

The following year, in 2006, the United States Supreme Court held that federal authority to regulate controlled substances does not give a federal administrative agency the authority to define what accepted medical use is. 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.

State laws recognizing the medical use of marijuana require the federal administrative agency to remove marijuana from schedule 1, because state lawmakers have the ultimate authority under federal law to make the decision on whether to accept marijuana for medical use.

The Iowa Uniform Controlled Substances Act states that its purpose is to "make uniform the law of those states which enact it." Iowa Code § 124.601

(2013). Petition for Judicial Review at p. 1 (App. 20). See, Uniform Controlled Substances Act §§ 101-401, 9 U.L.A. Part II (1994).

The language used in the Iowa Uniform Controlled Substances Act comes from the Uniform Controlled Substances Act, which, in turn, comes from the federal Controlled Substances Act. Petition for Judicial Review at p. 2 (App. 21). The purpose of the Uniform Controlled Substances Act is to "maintain uniformity between the laws of the several States and those of the federal government." Prefatory Note for Uniform Controlled Substances Act (1990).

Iowa law agrees with federal law. Marijuana can't be in schedule 1 if it has any accepted medical use in treatment in the United States. There is uniformity in the condition which has been placed on schedule 1. Nothing can be in schedule 1 if it has accepted medical use in treatment in the United States.

Think of this in the reverse to help understand it. Let's say Congress decides to remove a substance from federal schedule 1 and place it in federal schedule 2. There is no federal law requiring Iowa to remove that substance which has accepted medical use in treatment and place it in Iowa schedule 2 just because Congress decides to do so. Iowa law just says you have to comply with all federal laws to hold a license to prescribe or dispense a controlled substance in Iowa. Federal law says the same thing. There is no requirement that the state and federal government agree on which schedule the substance should be in. The stricter

schedule, whether it be state or federal, is the schedule that prevails for the purpose of maintaining a license to prescribe or dispense controlled substances. However, Iowa has its own law that does require Iowa to remove a substance from schedule 1 if it has accepted medical use in treatment in the United States and it would be that Iowa law that would then react to the federal determination that a substance does have medical use. The federal law does not force the state to reschedule that substance, but the Iowa law does. This Court should grant oral argument to talk this through with the Petitioner and the Board's attorney(s).

G. The Board was being Unreasonable

The Board did not dispute any of the facts presented by the Petitioner and did not cite any evidence to the contrary. The Board did not dispute that these facts all prove that marijuana has accepted medical use in treatment in the United States. The Board did not say the Petitioner's evidence was inadequate. The Board did not dispute that marijuana is incorrectly classified in Iowa. The Board simply found that all of these indisputable facts do not require the Board to take any action at all under Iowa Code §§ 124.201 and 124.203 (2013). Where is the due process in that?

At trial, the Petitioner argued that Iowa Code § 124.203(2) (2013) requires the Board to recommend reclassification if the Board finds that marijuana is not correctly classified, citing Iowa Code § 17A.19(10)(c) (2013). The Board argued

at trial that its decision should be upheld if reasonable, citing Iowa Code § 17A.19(10)(l) (2013). The District Court held that the Board's decision should only be rejected if it was unreasonable, citing Iowa Code § 17A.19(10)(l) (2013).

The only rationale given by the Board in support of its decision to deny the Petition for Agency Action was that Board had previously recommended that marijuana be reclassified three years earlier and that the legislature was currently considering marijuana's classification. It was entirely unreasonable for the Board to conclude that its input was unneeded or unadvisable considering the legislative intent expressed by the substantial language in the Iowa Code spelling out the duty of the Board to make recommendations on scheduling of controlled substances and considering the legislature was actually considering reclassification at the time. Why would the Board withhold its advice at the exact same time the legislature was considering this issue? It is impossible to imagine a more appropriate time for the Board to give its advice.

CONCLUSION

This Court should reverse the District Court's dismissal of the Petitioner's Petition for Judicial Review and order the Iowa Board of Pharmacy to recommend the reclassification of marijuana.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully request to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) or (2) because this brief has 4,152 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

This brief complies with the typeface requirements and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and (f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in 14-point, Times New Roman font.

Dated: August 24, 2015

Respectfully submitted,

/s/ Carl Olsen

Carl Olsen, Pro Se
130 East Aurora Avenue
Des Moines, IA 50313-3654
515-343-9933
carl-olsen@mchsi.com

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2015, the foregoing was served electronically on the following:

MEGHAN GAVIN
Assistant Attorney General
Iowa Department of Justice
Hoover State Office Building, 2nd Fl.
1305 East Walnut Street
Des Moines, Iowa 50319
Telephone: (515) 281-6736
Email: Meghan.Gavin@iowa.gov

Dated: August 24, 2015

Respectfully submitted,

/s/ Carl Olsen

Carl Olsen