IOWA BOARD OF PHARMACY

PETITION FOR RECOMMENDATION TO REMOVE MARIJUANA FROM SCHEDULE I OF THE IOWA UNIFORM CONTROLLED SUBSTANCES ACT	))))	**PETITION FOR AGENCY ACTION**

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

By provision of law:

> 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) (2009).

> 1. The board shall recommend to the general assembly that the general assembly place a substance in schedule I if the substance is not already included therein and the board finds that the substance:
> a. Has high potential for abuse; and
> b. Has no accepted 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, 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.

Iowa Code § 124.203 (2009).

REQUESTED ACTION

This petition requests a recommendation from the Iowa Board of Pharmacy ("Board" hereafter) to the Eighty-Fifth Iowa General Assembly that marijuana be removed from Schedule I, Iowa Code § 124.204, and such other revisions in the schedules which the Board deems necessary or advisable.

PRIOR HISTORY

A. First Ruling from the Board

On May 12, 2008, the Board was asked to make a recommendation to the general assembly that marijuana be removed from Schedule I. The reason given for that request was that twelve (12) state laws accepting the medical use of marijuana enacted between 1996 and 2008 established marijuana's "accepted medical use in treatment in the United States" as a matter of law.[1] The question of whether marijuana has "accepted medical use in treatment in the United States" was presented as a question of law

[1] Alaska, 1998; California, 1996; Colorado, 2000; Hawaii, 2000; Maine, 1999; Montana, 2004; Nevada, 2000; New Mexico, 2007; Oregon, 1998; Rhode Island, 2006; Vermont, 2004; Washington, 1998. Alaska Statutes § 17.37; California Health & Safety Code § 11362.5; Colorado Constitution Article XVIII, Section 14; Hawaii Revised Statutes § 329-121; 22 Maine Revised Statutes § 2383-B; Montana Code Annotated § 50-46-101; Nevada Constitution Article 4 § 38 - Nevada Revised Statutes Annotated § 453A.010; New Mexico Statutes Annotated § 30-31C-1; Oregon Revised Statutes § 475.300; Rhode Island General Laws § 21-28.6-1; 18 Vermont Statutes Annotated § 4471; Revised Code Washington (ARCW) § 69.51A.005.

rather than a question of science. See Iowa Board of Pharmacy Case No. 2008-105.

On October 7, 2008, the Board denied the request because it did not include any scientific evidence on marijuana's "potential for abuse."[2]

On April 21, 2009, the Iowa District Court remanded the case to the Board because "potential for abuse" is not determinative of whether marijuana should be placed in Schedule I. *McMahon v. Iowa Board of Pharmacy*, No. CV 7415 (Polk County), Ruling on Petition for Judicial Review.[3]

B. Second Ruling from the Board

On July 21, 2009, the Board again denied the request because it did not include any scientific evidence on the question of marijuana's medical efficacy.[4]

Judicial review was then sought on the grounds that the Board misinterpreted the statutory language "accepted medical use in treatment in

[2] http://petition.iowamedicalmarijuana.org/2012/20081007_pharmacy_board.pdf
[3] http://petition.iowamedicalmarijuana.org/2012/20090421_district_court.pdf ("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 to Schedule II is based upon an erroneous interpretation of law.")
[4] http://petition.iowamedicalmarijuana.org/2012/20090721_pharmacy_board.pdf

the United States" to mean "medical efficacy" rather than accepted medical use in 12 states (all of which are "in the United States").[5]

C. Third Ruling from the Board

While the appeal was pending, on July 21, 2009, the Board, sua sponte (on its own accord), decided to hold evidentiary hearings on medical marijuana and take evidence addressing, inter alia, the 8 factors in Iowa Code § 124.201(1)(a)-(h).[6]

The Board held a series of four public hearings, from August 19, 2009, to November 4, 2009, in Des Moines, Mason City, Iowa City, and Council Bluffs. The public hearings were transcribed by a certified court reporter.[7]

After the public hearings concluded on November 4, 2009, the Board voted unanimously on February 17, 2010, to recommend that the general assembly remove marijuana from Schedule I.[8]

On May 14, 2010, the Iowa Supreme Court dismissed the appeal as moot. *McMahon v. Iowa Board of Pharmacy*, No. 09-1789, Order.[9]

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[5] http://petition.iowamedicalmarijuana.org/2012/20091030_district_court.pdf
[6] http://petition.iowamedicalmarijuana.org/2012/20090721_scheduling_review.pdf; http://www.iowamedical.org/documents/news/081809_MarijuanaHearings.pdf; the 8 factors in Iowa Code § 124.201(1)(a)-(h) do not address the legal question of whether marijuana has accepted medical use in treatment in the United States as a matter of law based on individual state statutes accepting the medical use of marijuana.
[7] http://www.iowamedicalmarijuana.org/pharmacyhearings.aspx
[8] http://petition.iowamedicalmarijuana.org/2012/20100217_pharmacy_board.pdf

D. The Board is not required to explain its decision

Subsequent litigation held that the Iowa Board of Pharmacy is not required by law to explain the rationale for its decision. *Olsen v. Iowa Board of Pharmacy*, No. CV 8156 (Polk County), Ruling on Respondent's Motion to Dismiss (Aug. 23, 2010).[10]

E. Subsequent action by the Board

In November of 2010, the Board pre-filed LSB 1274DP with the Iowa Legislature (SSB 1016), recommending, inter alia, that the general assembly remove marijuana, Iowa Code § 124.204(4)(m), from Schedule I.[11]

F. Inaction by the legislature

During the 2011-2012 legislative sessions the general assembly neither accepted nor rejected the Board's recommendation.

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[9] http://petition.iowamedicalmarijuana.org/2012/20100514_supreme_court.pdf ("The Board ultimately made the reclassification recommendation sought by the petitioners and the intervenor.")

[10] http://petition.iowamedicalmarijuana.org/2012/20100823_district_court.pdf ("The Board did not supply any formal findings of fact or law in their recommendation to the state legislature.")

[11] http://petition.iowamedicalmarijuana.org/2012/ssb1016_Introduced.pdf (http://www.iowa.gov/ibpe/pdf/2010_11_24minutes.pdf)

WHY THIS ACTION IS NECESSARY

Because the general assembly neither accepted nor rejected the Board's recommendation, the administrative record supporting the Board's recommendation in 2010 is no longer current. This petition seeks a current recommendation from the Board to the Eighty-Fifth Iowa General Assembly (2013-2014) that the general assembly remove marijuana from Schedule I. When the general assembly eventually does address this matter, it should be advised of the most recent legal and scientific information available.

ADDITIONAL EVIDENCE

In support of this petition and in addition to the evidence presented to the Board between August 19, 2009, and November 4, 2009, the following evidence is presented in support of this petition.

A. Additional states have accepted the medical use of marijuana in treatment since May 12, 2008[12]

In addition to the original list of 12 states that had accepted the medical use of marijuana in treatment of medical conditions as of May 12, 2008, when the first petition was filed with the Board, five additional states and the District of Columbia have now accepted the medical use of marijuana in treatment: Arizona, November 2, 2010; Connecticut, May 31,

[12] The first petition was filed with the Board on May 12, 2008.

2012; Delaware, May 13, 2011; District of Columbia, May 21, 2010; Michigan, November 4, 2008; New Jersey, January 18, 2010.[13]

B. Two states have removed marijuana from Schedule I since November 4, 2009[14]

On June 16, 2010, the state of Oregon removed marijuana from Schedule I of the Oregon list of controlled substances (http://www.pharmacy.state.or.us/pharmacy/Imports/News/June.29.10PressReleaseMarijuana.pdf). The evidence supporting Oregon's decision to remove marijuana from Schedule I can be found on the official website of the Oregon Board of Pharmacy (http://www.pharmacy.state.or.us/Pharmacy/Marijuana-Rescheduling.shtml).

On May 31, 2012, the state of Connecticut enacted Public Act No. 12-55, Section 18(e), directing the Connecticut Commissioner of Consumer Protection to remove marijuana from Schedule I by January 1, 2013 (http://www.cga.ct.gov/2012/ACT/PA/2012PA-00055-R00HB-05389-PA.htm).

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[13] Arizona Revised Statutes, Title 36, Chapter 28.1, §§ 36-2801 through 36-2819; Connecticut Public Act No. 12-55 (May 31, 2012) (not yet codified); Delaware Code, Title 16, Chapter 49A, §§ 4901A through 4926A; D.C. Law 18-210; D.C. Official Code, Title 7, Chapter 16B, §§ 7-1671.01 through 7-1671.13; Michigan Compiled Laws, Chapter 333, §§ 333.26421 through 333.26430; New Jersey Public Laws 2009, Chapter 307, New Jersey Statutes, Chapter 24:6I, §§ 24:61-1 through 24:6I-16.

[14] The Iowa Board of Pharmacy closed the previous administrative record on November 4, 2009, and made its final ruling on February 17, 2010.

C. Two states have petitioned for federal removal of marijuana from Schedule I since November 4, 2009[15]

On November 30, 2011, the states of Washington and Rhode Island petitioned the U.S. Drug Enforcement Administration ("DEA" hereafter) to remove marijuana from Schedule I (http://www.governor.wa.gov/news/news-view.asp?pressRelease=1809&newsType=1). The evidence supporting Washington's and Rhode Island's petition to the DEA is published on the official website of the Governor of the state of Washington (http://www.governor.wa.gov/priorities/healthcare/petition/combined_document.pdf).

D. One state department of health has certified an additional condition for which marijuana has medical use in treatment since November 4, 2009[16]

On August 26, 2010, the Washington Department of Health added Renal Failure to its list of medical conditions for which marijuana can be used in treatment.

E. Two states have added additional conditions for which marijuana can be used in treatment since approximately November 4, 2009[17]

[15] See footnote 14.
[16] See footnote 14.
[17] See footnote 13.

On November 3, 2009, the state of Maine added the following medical conditions for which marijuana can be used in treatment: cancer, glaucoma, HIV, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's, nail-patella syndrome, chronic intractable pain, cachexia or wasting syndrome, severe nausea, seizures (epilepsy), severe and persistent muscle spasms, and multiple sclerosis.

On July 1, 2011, the state of Montana increased the scope of medical conditions for which marijuana can be used in treatment: painful peripheral neuropathy; a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms; admittance into hospice care.

F. Professional Organizations have recommended the reclassification of marijuana since November 4, 2009[18]

On November 10, 2009, the American Medical Association recommended reclassification of marijuana (http://www.ama-assn.org/resources/doc/csaph/i09csaph3ft.pdf).

On December 3, 2009, the Iowa Board of Pharmacy presented its findings to the National Association of Boards of Pharmacy (http://www.nabp.net/events/assets/Jessen.pdf) (http://www.nabp.net/events/past-educational-sessions/symposium/).

[18] See footnote 13.

On April 16, 2010, the Iowa Medical Society adopted a resolution supporting reclassification of marijuana (http://www.iowamedical.org/documents/Legis/IMSPolictyCompendium2011.pdf, see page 16).

On May 25, 2010, the National Association of Boards of Pharmacy gave the Iowa Board of Pharmacy an award for its work on reclassification of marijuana (http://www.nabp.net/publications/assets/IA082011.pdf).

Although the Iowa Pharmacy Association (IPA) does not publish its medical marijuana policy on its website (http://www.iarx.org/), on May 15, 2011, IPA's Chair, Dr. Renae Chesnut, shared this policy adopted by the IPA in 2010:

> 2010 Policy
> MARIJUANA FOR MEDICAL PURPOSES
>
> IPA supports legislation that mandates an active role for pharmacists and the Iowa Board of Pharmacy to define rules and regulations for monitoring, distributing, and regulating marijuana for medical purposes.
>
> IPA supports the development of a restricted process for production, procurement, distribution, and control of a standardized marijuana product for medical purposes.
>
> IPA supports education of pharmacists, pharmacy technicians, and student pharmacists on marijuana for medical purposes.
>
> IPA supports biomedical research to investigate the potential medical uses, dosing, safety, and efficacy of marijuana.

G. Medical research continues to support the medical use of marijuana

Submitted with this petition is a CD containing additional materials which have either been published after November 4, 2009 when the previous administrative record was closed, or which have not been previously submitted to the Board during the time the previous administrative record was open from August 19, 2009, to November 4, 2009. These materials are indexed and attached as an ADDENDUM to this petition.

To briefly summarize, California's Center for Medicinal Cannabis Research (http://www.cmcr.ucsd.edu/) was established by the California Legislature to answer the question, "Does marijuana have therapeutic value?" The Center for Medicinal Cannabis Research concluded:

> The classification of marijuana as a Schedule I drug as well as the continuing controversy as to whether or not cannabis is of medical value are obstacles to medical progress in this area. Based on evidence currently available the Schedule I classification is not tenable; it is not accurate that cannabis has no medical value, or that information on safety is lacking.

Grant I, Atkinson JH, Gouaux B, Wilsey B. Medical marijuana: clearing away the smoke. *The Open Neurology Journal*. 2012; Vol. 6, pp. 18-25, at page 24.

LEGAL ARGUMENT

A. Background

Nothing in Schedule I of Iowa's Uniform Controlled Substances Act except marijuana has ever been accepted for medical use in any state "in the United States" since the Iowa Uniform Controlled Substances Act was enacted approximately 41 years ago.[19]

Unlike anything else in Schedule I, marijuana has a long history of medical use in the United States. Marla James v. City of Costa Mesa, No. 10-55769 (9th Circuit, May 21, 2012) (Berzon, J., dissenting)[20], Slip. Op. at pages 5309-5310:

> 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 (1969). What's more, the Federal government itself conducted an experimental medical marijuana program from 1978 to 1992, and it continues to provide marijuana to the surviving participants. See *Conant v. Walters*, 309 F.3d 629, 648 (9th Cir. 2002). The existence of these programs indicates

[19] Iowa adopted the Uniform Controlled Substances Act, 9 U.L.A. Part II, in 1971 and the federal Controlled Substances Act was enacted by Congress in 1970. 1971 Iowa Acts 305, Chapter 148 (S.F. 1), enacted March 5, 1971, effective July 1, 1971; Public Law 91-513, 84 Stat. 1236, enacted October 27, 1970, codified at 21 U.S.C. §§ 801-904.

[20] http://www.ca9.uscourts.gov/datastore/opinions/2012/05/21/10-55769.pdf

> that medical marijuana was not a concept utterly foreign to Congress before 1996.

Marijuana's placement in Schedule I was controversial and has continued to remain controversial, unlike anything else in Schedule I. A presidential commission was established in the federal Controlled Substances Act (CSA) to address this controversy.[21] NORML v. Bell, 488 F.Supp. 123, 135 (D.D.C. 1980):

> In an effort to secure more information about marijuana, Congress, in section 601 of DAPCA, established the Commission on Marihuana and Drug Abuse to study marijuana use and its effects. The Commission, headed by Governor Raymond P. Shafer, issued its report, Marihuana: A Signal of Misunderstanding, in 1972. The Commission recommended that federal and state penalties for private possession of marijuana be eliminated and that governmental efforts should focus on discouraging marijuana use. Signal of Misunderstanding 134-38, 151-60.

The controversy hasn't gone away. NORML v. DEA, 559 F.2d 735, 751 n.70 (D.C. Cir. 1977):

> New studies have indicated that the dangers of marihuana use are not as great as once believed. A recent report of a federal panel representing, inter alia, HEW, DEA, the State Department, and the White House, concluded that marihuana use entails a "relatively low social cost," and suggested that decriminalization be considered. Washington Post, Dec. 12, 1976, at A1, col. 1; Washington Star, Dec. 12, 1976, at A7, col. 1. See *United States v. Randall*, supra note 61, at 2254 (characterizing marihuana as "a drug with no demonstrably

[21]Public Law 91-513, Oct. 27, 1970, 84 Stat. 1280-1281, Part F — Advisory Commission, Establishment of Commission on Marihuana and Drug Abuse.

> harmful effects"). Indeed, in NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, SECOND REPORT, DRUG USE IN AMERICA: PROBLEM IN PERSPECTIVE, Vol. I, at 235 (1973), the Commission recommended that "the United States take the necessary steps to remove cannabis from the Single Convention on Narcotic Drugs (1961), since this drug does not pose the same social and public health problems associated with the opiates and coca leaf products."

See also the OPINION AND RECOMMENDED RULING, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF Administrative LAW JUDGE (Francis L. Young), DEA Docket No. 86-22, September 6, 1988, at pages 58-59 ("Marijuana, in its natural form, is one of the safest therapeutically active substances known to man").[22]

Although the DEA Administrator rejected Judge Young's recommendation because the Administrator found that marijuana had no accepted medical use in treatment in the United States, the issue of safety for use in treatment under medical supervision is no longer considered a separate analytical question. See Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 940 n.4 (D.C. Cir. 1991):

> Since the Administrator based this determination on his decision that no medical uses are possible (and thus any use lacks "accepted safety"), we do not see that "safety" issue as raising a separate analytical question.

[22] http://www.iowamedicalmarijuana.org/pdfs/young.pdf

The following year, DEA formally announced that previous administrative decisions separating safety from accepted medical use were incorrect and both issues are the same for analytical purposes. Marijuana Scheduling Petition; Denial of Petition; Remand, DEA Docket No. 86-22, Vol. 57, Federal Register, No. 59, at page 10504 (Thursday, March 26, 1992):

> The scheduling criteria of the Controlled Substances Act appear to treat the lack of medical use and lack of safety as separate considerations. Prior rulings of this Agency purported to treat safety as a distinct factor. 53 FR 5156 (February 22, 1988). In retrospect, this is inconsistent with scientific reality. Safety cannot be treated as a separate analytical question.

Regardless of marijuana's safety for use in treatment under medical supervision in 1988, lack of accepted medical use in treatment in the United States at that time (and in 1991 and 1994 when the appeals had finally been exhausted) was fatal to the question of whether marijuana could be removed from Schedule I at that time.

After an initial remand, DEA's refusal to reclassify marijuana was upheld in Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131 (D.C. Cir. 1994). It's no coincidence that just two years later, in 1996, California became the first state "in the United States" to accept the medical use of marijuana in treatment "in the United States."

B. History

On May 14, 2010, the Iowa Supreme Court held that the question of whether the Board should have recognized that marijuana has accepted medical use in treatment in the United States as a matter of law was moot because the Board made the recommendation that was sought in the petition. Because the Board did not explain the rationale for its recommendation, it is not possible to determine whether the Board recognized marijuana had accepted medical use in treatment in the United States as a matter of law based on 12 states that had accepted the medical use of marijuana between 1996 and 2008 when the first petition was filed.[23]

C. <u>Argument</u>

Marijuana has accepted medical use in treatment in the United States as a matter of law because 17 states now accept the medical use of marijuana, as well as the District of Columbia. The Iowa legislature used specific words in setting the condition for marijuana's placement in Schedule I. Marijuana must not have any "accepted medical use in treatment in the United States" to remain in Schedule I.

The Iowa legislature defined the term "state" in the Iowa Uniform Controlled Substances Act:

> "*State*," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession,

[23] See footnote 9.

> and any area subject to the legal authority of the United States of America.

Iowa Code § 124.101(29).

Accepted medical use in treatment "in the United States" does not mean accepted medical use "in every state." In the Board's Supplemental Order of July 21, 2009, Case No. 2008-105, at page 9, the Board said "the United States is 50 states, not 12." The United States Court of Appeals for the First Circuit addressed this argument in Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987):

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

Accepted medical use in treatment "in the United States" does not mean accepted medical use "in Iowa." If the Iowa legislature had intended to make the condition for placement in Schedule I to be accepted medical use "in Iowa," it would have said so. The Board cannot simply assume the legislature made a mistake in using the phrase "in the United States" and really meant to say "in Iowa." Nor can the Board simply assume the legislature meant "medical use" as if the words "in the United States" were

not there. The legislature could have easily said “medical efficacy” if that was the legislature’s intent. The intent of the Iowa legislature is expressed in Iowa Code § 124.601 (“to make uniform the law of those states which enact it”).

The Iowa legislature’s choice of the words “in the United States” is consistent with the understanding that states are the primary regulators of medical practice in the United States. Conant v. Walters, 309 F.3d 629, 639 (9th Cir. 2002):

> Our decision is consistent with principles of federalism that have left states as the primary regulators of professional conduct. See *Whalen v. Roe*, 429 U.S. 589, 603 n. 30, 51 L. Ed. 2d 64, 97 S. Ct. 869 (1977) (recognizing states' broad police powers to regulate the administration of drugs by health professionals); *Linder v. United States*, 268 U.S. 5, 18, 69 L. Ed. 819, 45 S. Ct. 446 (1925) ("direct control of medical practice in the states is beyond the power of the federal government"). We must "show[] respect for the sovereign States that comprise our Federal Union. That respect imposes a duty on federal courts, whenever possible, to avoid or minimize conflict between federal and state law, particularly in situations in which the citizens of a State have chosen to serve as a laboratory in the trial of novel social and economic experiments without risk to the rest of the country." *Oakland Cannabis*, 532 U.S. at 501 (Stevens, J., concurring) (internal quotation marks omitted).

And see Gonzales v. Oregon, 546 U.S. 243, 251 (2006) (“The CSA explicitly contemplates a role for the States”).

In Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005), the U.S. Supreme Court acknowledged that the validity of marijuana's current federal classification is doubtful:

> 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. See, *e.g.*, Institute of Medicine, Marijuana and Medicine: Assessing the Science Base 179 (J. Joy, S. Watson, & J. Benson eds. 1999) (recognizing that "[s]cientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC [Tetrahydrocannabinol] for pain relief, control of nausea and vomiting, and appetite stimulation"); see also *Conant v. Walters*, 309 F.3d 629, 640-643 (CA9 2002) (Kozinski, J., concurring) (chronicling medical studies recognizing valid medical uses for marijuana and its derivatives).

In Gonzales v. Oregon, 546 U.S. 243 (2006), the U.S. Supreme Court explained in detail what the Controlled Substances Act (CSA) is designed to prevent and what it leaves to the states' police powers.

> . . . the CSA . . . regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States "'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" (citations omitted)

Id., 546 U.S., at 269-270. ". . . when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute." Id., 546 U.S., at 272.

Finally, the phrase "accepted medical use in treatment in the United States" does not mean accepted medical use by the U.S. Food and Drug Administration (FDA) and/or the U.S. Drug Enforcement Administration (DEA). See Grinspoon v. DEA, 828 F.2d 881, 887 (1st Cir. 1987):

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

CONCLUSION

This petition acknowledges the Board has a duty to consider the 8 factors in Iowa Code section 124.201(1)(a)-(h). However, none of those factors is determinative, either singly or cumulatively. The Board cannot interpret the 8 factors in Iowa Code section 124.201(1)(a)-(h) a manner which would result in a recommendation inconsistent with Iowa Code §

124.203(1)(b).[24] The law requires that marijuana be removed from Schedule I because marijuana now has accepted medical use in treatment in the United States as a matter of law.

Dated August 3, 2012.

Respectfully submitted,

_____
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ADDENDUM

A PDF file of this petition is included on the CD.

National Cancer Institute at the National Institutes of Health
Cannabis and Cannabinoids (PDQ®)
http://www.cancer.gov/cancertopics/pdq/cam/cannabis/healthprofessional

CENTER FOR MEDICINAL CANNABIS RESEARCH
Report to the Legislature and Governor of the State of California

[24] In his ruling remanding the case to the Board, Judge Novak stated, "A finding of accepted medical use in treatment in the United States alone would be sufficient to warrant recommendation for reclassification or removal pursuant to the terms of Iowa Code section 124.203." *McMahon v. Board of Pharmacy*, No. CV 7415, April 21, 2009, page 4, footnote 1.

presenting findings pursuant to SB847 which created the CMCR and provided state funding. February 11, 2010.
http://www.cmcr.ucsd.edu/images/pdfs/CMCR_REPORT_FEB17.pdf

Armentano P. (2012). *Clinical Applications for Cannabis and Cannabinoids: A Review of the Recent Scientific Literature* (5th Ed.) NORML. http://norml.org/pdf_files/NORML_Clinical_Applications_for_Cannabis_and_Cannabinoids.pdf

Marijuana Policy Project (2011). *State-by-State Medical Marijuana Laws*. http://www.mpp.org/assets/pdfs/library/State-by-State-Laws-Report-2011.pdf

Mathre ML. (2012). *Cannabis/Cannabinoid Research Update (late 2009 - July 2012)*. Patients Out of Time.

Materials On the CD submitted with this petition:

MedicalCannabis.com Patients Out of Time

To: Iowa Board of Pharmacy

Re: Cannabis/Cannabinoid Research Update (late 2009 - July 2012)

Overviews/reviews

Armentano P. (2012). *Clinical Applications for Cannabis and Cannabinoids: A Review of the Recent Scientific Literature* (5th Ed.) NORML. NORML_Clinical_Applications_for_Cannabis_and_Cannabinoids.pdf

Alexander S, Mackie K & Ross R. (Eds.) (2010). Special Issue: Themed Issue: Cannabinoids. *British Journal of Pharmacology*. 160(5):421-783.
On the CD: index.html#bjp2010

Bab I & Alexander, S. (Eds). (2011). Special Issue: Cannabinoids in Biology and Medicine, Part 1. *British Journal of Pharmacology*. 163(7):1327-1562.
On the CD: index.html#bjp2011

Grant I, Atkinson JH, Gouaux B & Wilsey B. (2012). Medical marijuana: clearing away the smoke. Open Neurol J. 6:18-25. DOI: 10.2174/1874205X01206010018
On the CD: Grant_2012.pdf
PubMed: http://www.ncbi.nlm.nih.gov/pubmed/22629287

Izzo AA, Borrelli F, Capasso R, Di Marzo V & Mechoulam R. (2009). Non-psychotropic plant cannabinoids: new therapeutic opportunities from an ancient herb. Trends in Pharmacological Sciences. 30(10):515-27.
On the CD: Izzo_2009.pdf
PubMed: http://www.ncbi.nlm.nih.gov/pubmed/19729208

Russo E. (2011). Taming THC: potential cannabis synergy and phytocannabinoid-terpenoid entourage effects. *British Journal of Pharmacology*. DOI: 10.1111/j.1476-5381.2011.01238.x
On the CD: Russo_2011.pdf
PubMed: http://www.ncbi.nlm.nih.gov/pubmed/21749363

Clinical Trials

Abrams, DI, Couey P, Shade SB, Kelly ME, Benowitz NL. (2011). Cannabinoid-opioid interaction in chronic pain. *Clinical Pharmacology & Therapeutics*. 90(6):844-851.
On the CD: Abrams_2011.pdf
PubMed: http://www.ncbi.nlm.nih.gov/pubmed/22048225

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Past History

October 7, 2008 - Iowa Board of Pharmacy

April 21, 2009 - Iowa District Court

July 21, 2009 - Iowa Board of Pharmacy

July 21, 2009 - Scheduling Review

October 30, 2009 - Iowa District Court

February 17, 2010 - Iowa Board of Pharmacy

May 14, 2010 - Iowa Supreme Court

August 23, 2010 - Iowa District Court

November 29, 2010 - Iowa Board of Pharmacy

British Journal of Pharmacology

British Journal of Pharmacology
Special Issue: Cannabinoids in Biology and Medicine, Part I.
Guest Editors: Itai Bab and Steve Alexander

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