

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p><b>CARL OLSEN,</b> Petitioner,</p> <p>vs.</p> <p>IOWA BOARD OF PHARMACY, Respondent.</p>	<p>Case No. <b>CVCV045505</b></p> <p><b>PETITIONER'S RESISTANCE TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW</b></p>
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**COMES NOW** Petitioner, Carl Olsen, through counsel, and for the Resistance to Motion to Dismiss Petition for Judicial Review states:

1. The Iowa Board of Pharmacy (the "**Board**") requests the district court dismiss the Petition for Judicial Review as moot for the reason that the "legislative session is nearly complete and the time period for filing new bills has closed. Any order directing the Board to change its recommendation this legislative session would be too late to have any effect." Mot. to Dismiss ¶ 6.

2. The Board has not acted in good faith in the hearing, consideration and ruling on the merits of Petitioner's request to reschedule marijuana from Schedule I to Schedule II. Petitioner filed a petition with the Board on August 3, 2012. The Board waited more than 90 days to consider the Petition. It then delayed the issuance of a written ruling for another 60 days until January 16, 2013, two days after the start of the session for the 85<sup>th</sup> Iowa General Assembly. The ruling itself contends the petition and supporting documentation "did *not* contain sufficient new scientific information to warrant the reclassification of marijuana this year," a conclusion that is wholly at odds with the Board's recommendation to reschedule marijuana two years prior.

3. Petitioner contends mootness does not apply here because the challenged action by the Board is "capable of repetition, yet evading review." *See generally Sosna v.*

*Iowa*, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975). These delays, for which the Board alone is responsible, make it virtually impossible for Petitioner to obtain complete judicial review of the controversies before the end of the session on May 3, 2013. Also, there is every reasonable expectation that Petitioner will be subjected to the same dilatory tactics again when he returns to the Board in 2013 requesting an annual recommendation to reschedule marijuana provided under Iowa code section 124.201(1).

4. Assuming *arguendo* that that controversy here is rendered moot by the Board's delay, Petitioner urges the district court to apply the "public interest" exception to the mootness doctrine. See *Rush v. Ray*, 332 N.W.2d 325, 326 (Iowa 1983). The rescheduling of marijuana is certainly an important public question. Eighteen states and the District of Columbia, which comprise more than 33 percent of the total population based on 2012 Census data, have enacted laws effectively permitting access to medical marijuana. Petitioner contends, too, that an authoritative adjudication to guide the Board in the future is desirable. Can the Board simply recommend rescheduling on a single occasion and collectively "wash its hands" of the issue forever? The General Assembly will undoubtedly look to the Board for guidance on the topic of marijuana every time a rescheduling bill is filed as long as the Board is charged the duty of recommending changes under section 124.201(1). Because Iowa law provides for annual recommendations, there is a strong likelihood of future recurrence of this same problem.

**WHEREFORE**, Petitioner, Carl Olsen, requests the district court deny the Board's request to dismiss the Petition for Judicial Review.

Respectfully submitted,

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