

BOARD OF PHARMACY EXAMINERS

Petition by Carl Olsen and others
for rulemaking
relating to the medical use of marijuana.

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PETITION FOR
RULE MAKING

This is a petition for rulemaking pursuant to Iowa Code §§ 124.204(4)(m) and 124.206(7)(a), Iowa Administrative Code 657 Chapter 26, and Iowa Code Chapter 17A.

THE NEW RULE BEING PROPOSED
657 IAC § 26.1(1)

SCHEDULES OF CONTROLLED SUBSTANCES

Schedule II.

Marijuana.

See Drug Enforcement Administration rule 21 C.F.R. § 1308.13(g)(1) showing delta-9-tetrahydrocannabinol currently scheduled in Schedule III by administrative rule. Congress initially placed all tetrahydrocannabinols in Schedule I, 21 U.S.C. § 812 Schedule I (c)(17), but they can be moved to another schedule by an administrative rule pursuant to 21 U.S.C. § 811. The Iowa Legislature has only given the Iowa Board of Pharmacy the authority to transfer one controlled substance, marijuana, and only from Schedule I to Schedule II, by administrative rule. The process is the same – rulemaking.

CITATION TO RELEVANT LAW
657 IAC § 26.1(2)

Iowa Code §§ 124.204(4)(m) and 124.206(7)(a) authorize the Iowa Board of Pharmacy Examiners to make this administrative rule.

BRIEF SUMMARY OF ARGUMENT
657 IAC § 26.1(3)

On February 17, 2010, the Iowa Board of Pharmacy recommended the Iowa Legislature remove marijuana from Iowa Code § 124.204.

Iowa law authorizes the Iowa Board of Pharmacy to make recommendations to the Iowa Legislature for revisions to the schedules of controlled substances:

IC 124.201 Duty to recommend changes in schedules.

1. The board shall administer the regulatory provisions of this chapter. 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.

However, Iowa law additionally authorizes the Iowa Board of Pharmacy to remove one particular Schedule I controlled substance, marijuana, from Iowa Code § 124.204 by administrative rule.

IC 124.204 Schedule I – substances included.

4(m). Marijuana, except as otherwise provided by ***rules of the board*** of pharmacy examiners for medicinal purposes.

IC 124.206 Schedule II – substances included.

7(a). Marijuana when used for medicinal purposes pursuant to ***rules of the board*** of pharmacy examiners.

By relying solely on the power to “recommend” reclassification of marijuana instead of using the power to reclassify marijuana by administrative rulemaking, the Iowa Board of Pharmacy is unnecessarily putting the lives and health of Iowans at greater jeopardy because of the enhanced due process procedures that rulemaking provides.

**BRIEF SUMMARY OF DATA SUPPORTING PETITION
657 IAC § 26.1(4)**

Data supporting this petition was submitted to the Iowa Board of Pharmacy between August and November of 2009.

**NAMES AND ADDRESSES OF OTHER PERSONS AFFECTED
657 IAC § 26.1(5)**

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In addition, any Iowa resident who testified at one or more of the four medical marijuana hearings held by the Iowa Board of Pharmacy between August and November of 2009 is also an affected or interested person.

**REQUEST FOR MEETING PROVIDED BY RULE 26.4(17A)
657 IAC § 26.1(6)**

Petitioner requests a meeting with a representative of the Iowa Board of Pharmacy to discuss the rule being proposed in this petition.

**ORIGINAL SIGNATURE OF PETITIONER AND DATE SIGNED
657 IAC § 26.1(7)**

Dated this 12th day of October, 2010.

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Attachment:

Petitioner's memorandum in support of action urged in the petition: IAC 657 – 26.2(17a).