

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>CARL OLSEN, Petitioner, vs. IOWA BOARD OF PHARMACY, Respondent.</p>	<p>CASE NO. CVCV056841</p> <p><b>RESPONDENT’S REPLY TO PETITIONER’S RESISTANCE TO RESPONDENT’S MOTION TO DISMISS</b></p>
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COMES NOW Respondent, the Iowa Board of Pharmacy (“Board”), and files this reply to Petitioner’s resistance to the Board’s previously filed motion to dismiss, respectfully stating as follows:

1. The Board has statutory authority to make non-binding recommendations to the legislature regarding changes to the scheduling of controlled substances when it deems them necessary or advisable; the Board has no legal obligation to hear a request for such a recommendation from a private individual. While the Board may have voluntarily elected to entertain prior requests to recommend the rescheduling of a controlled substance, the Board is not under a continuing obligation to formally hear every request filed by a private individual. Because there is no legal right or formal procedure that requires the Board to do anything further with Mr. Olsen’s request, there would be no further proceedings to be held on remand.

2. Mr. Olsen’s previous requests asked the Board to make non-binding recommendations to reschedule marijuana based on its medical use and potential for abuse—not based on religious use. Given the factors listed in Iowa Code section 124.201(1), which focus on the Board’s expertise in weighing the risks and benefits of

controlled substances, it is obvious why the Board may have previously chosen to consider whether to make a non-binding recommendation regarding marijuana based on medical use and why it would be inappropriate for the Board to consider whether to make an independent recommendation based on religious use.

3. If there is a change in federal law exempting the bona fide religious use of marijuana by Rastafari, the Board may choose to recommend a change to Iowa Code chapter 124 to align with the change in federal law, in the same manner it does for other changes in the federal scheduling of controlled substances. Notably, the religious exemption for peyote in Iowa Code section 124.204(8) is based on a similar exemption in federal law, *see* 21 C.F.R. § 1307.31; it did not arise from an independent determination and non-binding recommendation from the Board. *See* 1971 Iowa Acts ch. 148, § 201 (creating the statutory authority of the Board to recommend schedule changes) (codified at Iowa Code § 204.201 (1973)); 1967 Iowa Acts ch. 189, § 2 (creating the peyote exemption for bona fide Native American Church religious ceremonies) (codified at Iowa Code § 204A.2(12) (1971))

4. Again, nothing prevents Mr. Olsen from lobbying for a legislative change, at the state or federal level, for the relief he seeks. There is no requirement that he go through the Board for the change in law he is seeking. The Board should not be required to serve as the messenger for all constitutional grievances a private individual may have with a statute that the Board itself cannot amend.

5. Finally, Petitioner appears to be attempting to rectify his lack of standing by amending his Petition. While the proposed Amended Petition asserts that Mr. Olsen is a member and priest of the Ethiopian Zion Coptic Church and that he is unable to freely

exercise his religion, it still fails to demonstrate how the agency action under review by this Court “aggrieves or adversely affects” him. While he appears to be aggrieved by the lack of a statutory exemption for his religious use of marijuana, his proposed Amended Petition fails to sufficiently allege how the Board can rectify his constitutional grievance. Consequently, he has not met the standing requirement set forth in Iowa Code chapter 17A and his Petition, whether amended or not, should be dismissed.

**WHEREFORE**, Respondent respectfully requests this Court dismiss the Petition.

Respectfully submitted,

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