

Exhibit #1

State of Iowa
Board of Pharmacy

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BOARD MEMBERS

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Storm Lake

MINUTES

January 5-6, 2015

The Iowa Board of Pharmacy met on January 5-6, 2015, in the conference room at 400 SW Eighth Street, Des Moines, Iowa. Vice-Chair Miller called the meeting to order at 1:00 p.m.

MEMBERS PRESENT

Edward L. Maier, Chairperson
(joined at 2:15 p.m. on January 5)
James Miller, Vice-Chair
Susan M. Frey
LaDonna Gratias
Edward J. McKenna
Sharon K. Meyer

MEMBERS ABSENT

Judith M. Trumpy

SPEAKERS

Heather Rickertsen, Mercy Family Pharmacy
Josh Feldman, Mercy Family Pharmacy
Megan Myers, Iowa Pharmacy Association
Carl Olsen, Des Moines

STAFF PRESENT

Lloyd Jessen, Executive Director
Meghan Gavin, Esq., Assistant Attorney
General
Laura Steffensmeier, Esq., Assistant
Attorney General
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary

Compliance Officers Present:

Andrew Funk
Curt Gerhold
Mark Mather
Sue Mears
Jean Rhodes
Jennifer Tiffany
Jennifer O'Toole
Jim Wolfe

I. Minutes.

The Minutes of the November 14, 2014, teleconference meeting; the November 18-19, 2014, meeting; and the December 10, 2014, teleconference meeting were read.

January 5-6, 2015

Page 2 of 10

Motion (Gratias/Meyer) to approve the minutes of the November 14, 2014, teleconference meeting. Passed: 5-0-0-2. Absent: Maier, Trumpy.

Motion (Gratias/McKenna) to approve the minutes of the November 18-19, 2014, meeting. Passed: 5-0-0-2. Absent: Maier; Trumpy.

Motion (McKenna/Meyer) to approve the minutes of the December 10, 2014, teleconference meeting. Passed: 4-1-0-2. Abstain: Frey; Absent: Maier, Trumpy.

II. Requests.

- A. Request for Termination of Probation – Bill Poulos, Pharmacist License No. 20076, Dodge City, Kansas.

Motion (Frey/McKenna) to table request. Passed: 5-0-0-2. Absent: Maier, Trumpy.

Motion (Miller/Frey) to approve request for termination of probation. Passed: 6-0-0-1. Absent: Trumpy.

- B. Request for Waiver – 657 I.A.C. 8.34 Collaborative Drug Therapy Management – Heather Rickertsen, Pharmacist License No. 20196, Delmar.

Motion (Frey/Meyer) to table the request for waiver pending additional information and follow-up with the Board of Medicine and Board of Nursing. Passed: 4-0-1-2. Abstain: Miller; Absent: Maier, Trumpy.

- C. 2015 Pharmacy Summit Invitation – University of Iowa College of Pharmacy.

The University of Iowa College of Pharmacy will be hosting an Iowa Pharmacy Technician Education Summit on February 5, 2015, in Des Moines.

- D. Recommendations Regarding Licensure Preferences for Military Spouses.

Motion (Frey/McKenna) to send recommendation to the Legislature to include Military Spouses. Passed: 5-0-0-2. Absent: Maier, Trumpy.

- E. Petition to Request Reclassification of Marijuana – Carl Olsen, Des Moines.

Motion (Miller/Frey) to deny the petition. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Order Denying Petition is attached as Addendum A.

Motion (Frey/Gratias) to recommend to the Legislature that Cannabidiol be classified as a Schedule II substance in the Controlled Substances Act (CSA). Passed: 6-0-0-1. Absent: Trumpy. A copy is attached as Addendum B.

Motion (Frey/Gratias) to recommend to the Legislature that they remove the phrase “pursuant to rules of the Board,” from Schedule I exemption for medical marijuana because the Board does not have the authority to establish such a program and I further recommend that the same

January 5-6, 2015

Page 3 of 10

phrase be removed from Schedule II regarding medical marijuana for the same reason. Passed: 6-0-0-1. Absent: Trumpy. Addendum B addresses this motion.

III. Reports.

Executive Director's Report.

A. Financial.

FY15 as of 11/30/14 ((41.67% of FY completed)

Revenue Anticipated:	\$ 3,833,933
Revenue Y-T-D	\$ 1,586,494 (59%)
Carry-over from FY14	\$ 1,504,637
FY15 Fee Receipts	\$ 771,538
Budget Allocation	\$ 3,833,933
Obligations Y-T-D	\$ 1,275,116 (33.3%)
Cash Fund Balance	\$ 1,365,568
(\$ 850,000 reserved for database)	
Fines/Civil Penalties Collected	\$ 32,250

B. Meetings and Travel.

1. A public hearing on proposed administrative rules will be held on January, 15, 2015, at the Board office in Des Moines.
2. The next Rules Committee Meeting is scheduled for January 27, 2015, at the Board office in Des Moines.
3. An Administrative Hearing for PCM Venture, LLC, Sandy, Utah, is scheduled for January 28-29, 2015, at the Board office in Des Moines.
4. The IPA Legislative Day will be held on January 29, 2015, in Des Moines.
5. An Iowa Pharmacy Technician Education Summit will be held on February 5, 2015, at the Pappajohn Education Center in Des Moines. The summit is being hosted by the University of Iowa College of Pharmacy. The Iowa Board of Pharmacy will present information on pharmacy technician demographics in Iowa.
6. An Iowa Prescription Monitoring Program (PMP) Conference will be held on February 10, 2015, at Camp Dodge in Johnston. The conference is being hosted by the Iowa Board of Pharmacy, the Iowa PMP Advisory Council, and the Governor's Office of Drug Control Policy.
7. The 2015 Midwest Pharmacy Expo will be held in Des Moines, on February 13-15, 2015. The Iowa Board of Pharmacy will provide a pharmacy law presentation on February 15, 2015.

January 5-6, 2015

Page 4 of 10

8. The March Board Meeting is scheduled for March 9-11, 2015, at the Board office in Des Moines. The meeting will begin at 1:00 p.m. on March 9.
9. The April Board Meeting is scheduled for April 28-29, 2015, at the Board office in Des Moines. A retirement dinner for Susan Frey will be held on the evening of April 28.

C. Prescription Drug Abuse: 2013- Strategies to Stop the Epidemic – Trust for America’s Health. Informational item.

D. Iowa Electronic Pseudoephedrine Tracking System Annual Report (National Precursor Log Exchange – NPLEx) – Office of Drug Control Policy.

The Iowa Electronic Pseudoephedrine Tracking System Annual Report was provided for review.

E. Carl Olsen vs. Iowa Board of Pharmacy – Ruling on Petition for Judicial Review.

Meghan Gavin advised the Board that this matter has now been appealed to the Iowa Supreme Court. She further indicated that a decision may be issued by the Iowa Court of Appeals as early as sometime in the Fall of 2015. A copy of Ruling on Petition for Judicial Review is attached as Addendum C.

F. Surescripts Second Update Regarding Industry Progress in Implementing Electronic Prescribing for Controlled Substances (EPCS).

Discussion was held regarding prescribers and pharmacies being in full compliance with the Drug Enforcement Administration’s (DEA) interim final rule (IFR) allowing electronic prescribing for controlled substances (EPCS) and that all application vendors connecting to the Surescripts network have met all the applicable DEA EPCS IFR requirements, ensuring that EPCS communications on Surescripts’ network are legal.

G. Pharmacy Opening and Closing Statistics.

Opening and closing statistics for Iowa Pharmacies were provided for review. In future reports, the Board requested geographical information regarding as to where the changes are occurring.

2012 New = 43 / Closed = 44

2013 New = 43 / Closed = 45

2014 New = 24 / Closed = 40

H. Patient Safety & Medication Error Prevention for Pharmacy.

The Oregon State University College of Pharmacy recently released their Patient Safety & Medication Error Prevention for Pharmacy Course. The course provides pharmacists the tools

January 5-6, 2015

Page 5 of 10

to identify problems, reduce risks, and improve communications, resulting in improved patient safety within the pharmacy environment.

I. List of Those Indicted in NECC Case – John R. Ellement, Boston Globe.

Informational item.

J. New Practice Model Interim Report – Megan Myers, Iowa Pharmacy Association.

The Iowa Pharmacy Association and Drake University College of Pharmacy provided their Quarterly New Practice Model Report for review.

IV. Legislation.

A. Non-Resident Pharmacy Legislation Language: Karen Sisson, Walgreen Co., and Jeff Lindoo, Thrifty White Pharmacies.

Informational item.

B. Public Comment on Proposed Legislation.

Informational item.

V. Licensure/Registration.

A. Iowa Wholesale Drug License Application.

Motion (Frey/Miller) to approve renewal application and have compliance officer follow-up with the parent company in the following cases. Passed: 6-0-0-1. Absent: Trumpy.

1. AR Scientific Inc., Wholesale Drug License No. 6310 of Philadelphia, Pennsylvania.
2. Mutual Pharmaceutical Company Inc., Wholesale Drug License No. 7480 of Philadelphia, Pennsylvania.
3. Mutual Pharmaceutical Company Inc., Wholesale Drug License No 7479 of Philadelphia, Pennsylvania.

B. Preliminary Notice of Intent to Deny License – Sun Pharmaceutical Industries, Inc., Cranbury, New Jersey.

Motion (Miller/Gratias) to approve Preliminary Notice of Intent to Deny License. Passed: 6-0-0-1. Absent: Trumpy. A copy is attached as Addendum D.

C. Preliminary Notice of Intent to Deny Registration.

January 5-6, 2015

Page 6 of 10

Motion (Miller/McKenna) to approve Preliminary Notice of Intent to Deny Registration in the following cases. Passed: 6-0-0-1. Absent: Trumpy.

1. Michelle Heidebrink, of Oskaloosa. A copy of the Preliminary Notice of Intent to Deny Registration is attached as Addendum E.
2. Rhonda Macy of Des Moines. A copy of the Preliminary Notice of Intent to Deny Registration is attached as Addendum F.
3. Stephanie Wadell of Orange City. A copy of the Preliminary Notice of Intent to Deny Registration is attached as Addendum G.

D. Pharmacy Support Person Application – Shaunetta L. McNeil, Iowa City.

Motion (Miller/McKenna) to approve Pharmacy Support Person Application. Passed: 4-1-0-1. No: Frey; Absent: Trumpy.

E. Zachary Monono - Licensure Transfer Candidate, Omaha, Nebraska.

Motion (Miller/McKenna) to approve Application for Transfer of Pharmacist License to the state of Iowa. Passed: 6-0-0-1. Absent: Trumpy.

VI. Complaints Against Non-Licensees.

A. 2014-193 Wellmark Blue Cross Blue Shield of Iowa.

Motion (Frey/Miller) to close with no action. Passed: 6-0-0-1. Absent: Trumpy.

VII. Closed Session.

Motion (Frey/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review complaint or investigative information required by Section 272C.6(4) to be kept confidential; and 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

Motion (McKenna/Frey) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

VIII. Administrative Hearing.

A. Robert Osborn, Pharmacist License No. 19079 of Rock Island, Illinois.

On November 19, 2014, the Iowa Board of Pharmacy found probable cause to file Notice of Hearing and Statement of Charges against the above-named individual.

Margaret LaMarche, Administrative Law Judge for the State, presided. Assistant Attorney General Meghan Gavin represented the Board. Robert Osborn appeared without counsel.

January 5-6, 2015

Page 7 of 10

The hearing was conducted in the presence of the Board. The hearing was closed to the public.

The Board heard testimony of witnesses and examined exhibits.

VIX. Closed Session.

Motion (Frey/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

Motion (McKenna/Miller) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

Motion (Gratias/Frey) to direct Administrative Law Judge LaMarche to draft the decision of the Board in the Osborn case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

X. Closed Session.

Motion (Frey/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review complaint or investigative information required by Section 272C.6(4) to be kept confidential; and 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

Motion (Frey/McKenna) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

In open session the following actions were taken.

A. Settlement Agreement and Final Order.

Motion (Miller/Frey) to approve the Settlement Agreement and Final Order in the following cases. Passed: 6-0-0-1. Absent: Trumpy.

1. Matthew Sherrow, Pharmacist License No. 18612 of Springfield, Illinois. A copy of the Settlement Agreement and Final Order is attached as Addendum H.
2. James Kaufman, Pharmacist License No. 18228 of Sioux City. A copy of the Settlement Agreement and Final Order is attached as Addendum I.
3. OK Compounding LLC, Nonresident Pharmacy License No. 4204 of Skiatook, Oklahoma. A copy of the Settlement Agreement and Final Order is attached as Addendum J.

B. Combined Statement of Charges, Settlement Agreement, and Final Order.

Motion (Miller/McKenna) to approve the Combined Statement of Charges, Settlement Agreement, and Final Order in the case of Richard Upton, Pharmacist License No. 19779 of

January 5-6, 2015

Page 8 of 10

Sidney. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Statement of Charges, Settlement Agreement, and Final Order is attached as Addendum K.

C. Combined Notice of Hearing and Statement of Charges.

Motion (Frey/McKenna) to approve Notice of Hearing and Statement of Charges in the following cases. Passed: 6-0-0-1. Absent: Trumpy.

1. Amanda Knouse, Pharmacy Technician Registration No. 20304 of Des Moines. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum L.
2. Stacy Jahlas, Pharmacy Technician Registration No. 14928 of Belle Plaine. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum M.
3. Stephen Scott, Pharmacist License No. 18067 of Tipton. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum N.

D. Order to Show Cause.

Motion (Miller/Frey) to approve Order to Show Cause in the following cases. Passed: 6-0-0-1. Absent: Trumpy.

1. Paula Curran, CSA Registration No. 5201077 of Burlington. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Order to Show Cause is attached as Addendum O.
2. Timothy Smith, CSA Registration No. 1709957 of Marshalltown. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Order to Show Cause is attached as Addendum P.

E. Confidential Order for Evaluation.

Motion (Miller/Meyer) to approve Confidential Order for Evaluation for C.S. and D.H. Passed: 6-0-0-1. Absent: Trumpy.

F. Draft Statement of Charges.

Motion (Miller/McKenna) to draft Statement of Charges against the stated individuals in the following complaints: pharmacy and pharmacist in charge in 2014-50; pharmacy in 2014-100; technician in 2014-137; technician in 2014-169; technician in 2014-173; pharmacy in 2014-182; technician in 2014-189; and pharmacy and pharmacist in charge in 2014-204. Passed: 6-0-0-1. Absent: Trumpy.

G. Administrative Warning.

Motion (Miller/McKenna) to send an Administrative Warning to the pharmacy in 2014-186. Passed: 6-0-0-1. Absent: Trumpy.

H. Letter of Education.

January 5-6, 2015

Page 9 of 10

Motion (Miller/McKenna) to send a Letter of Education to the CSA Registrant in 2014-191. Passed: 6-0-0-1. Absent: Trumpy.

I. Close With No Action.

Motion (Miller/McKenna) to close with no further action the investigative file in complaint numbers: 2013-146, 2013-3435, 2013-3591, 2013-4095, 2013-9992, 2014-144, 2014-166, 2014-167, 2014-170, 2014-174, 2014-178, 2014-179, 2014-183, 2014-184, 2014-185, 2014-187, 2014-190, 2014-192, 2014-194, 2014-195, 2014-196, 2014-197, 2014-199, and 2014-206. Passed: 6-0-0-1. Absent: Trumpy.

J. Close and Refer to Another Agency.

Motion (Frey/Miller) to close 2014-16 and refer to another agency. Passed: 6-0-0-1. Absent: Trumpy.

K. Release Request from Consultant Requirement.

Motion (Miller/McKenna) to release Randy Moad from consultant requirement. Passed: 6-0-0-1. Absent: Trumpy.

L. Draft Order to Show Cause.

Motion (Miller/McKenna) to draft Order to Show Cause against the CSA registrant in 2014-171. Passed: 6-0-0-1. Absent: Trumpy.

XI. Closed Session.

Assistant Attorney Generals Meghan Gavin and Laura Steffensmeier left the room.

Motion (Frey/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

Motion (McKenna/Gratias) to go into open session. Roll call vote. Yes: Frey, Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Trumpy. Passed: 6-0-0-1.

In open session the following actions were taken.

A. Findings of Fact, Conclusions of Law, Decision and Order.

Motion (Miller/McKenna) to approve the Findings of Fact, Conclusions of Law, Decision and Order in the case of James Nielcen, Pharmacist License No. 14579 of Waterloo. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Findings of Fact, Conclusions of Law, Decision and Order is attached as Addendum Q.

B. Findings of Fact, Conclusions of Law, Decision and Order.

January 5-6, 2015

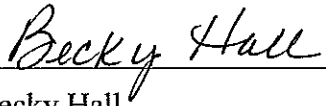
Page 10 of 10

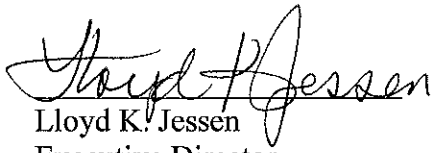
Motion (Frey/McKenna) to approve the Findings of Fact, Conclusions of Law, Decision and Order in the case of Matthew Biggerstaff, CSA Registration No. 1306092 of Ankeny. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Findings of Fact, Conclusions of Law, Decision and Order is attached as Addendum R.


C. Findings of Fact, Conclusions of Law, Decision and Order.

Motion (Miller/McKenna) to approve the Findings of Fact, Conclusions of Law, Decision and Order in the case of Medicap Pharmacy, CSA Registration No. 1106533 of Oskaloosa. Passed: 6-0-0-1. Absent: Trumpy. A copy of the Findings of Fact, Conclusions of Law, Decision and Order is attached as Addendum S.

Meeting adjourned at 1:15 p.m. on January 6, 2015.


Becky Hall
Recording Secretary


Lloyd K. Jessen
Executive Director


Edward L. Maier
Board Chair

APPROVED THIS 10th DAY OF March, 2015.

ADDENDUM A

**ORDER DENYING PETITION
FOR AGENCY ACTION
TO RESCHEDULE MARIJUANA**

JANUARY 5, 2015

BEFORE THE IOWA BOARD OF PHARMACY

PETITION FOR AGENCY ACTION TO RESCHEDULE MARIJUANA))))	ORDER DENYING PETITION
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PROCEDURAL BACKGROUND

On July 7, 2014, Carl Olsen filed a Petition for Agency Action requesting that the Iowa Board of Pharmacy ("Board") recommend to the Iowa General Assembly the removal of marijuana from Schedule I. The Petition does not request or suggest what schedule marijuana should be placed in, only that it be removed from Schedule I.

The Board first considered the Petition at its August 2014 meeting. The Board tabled consideration of the Petition at that time and appointed a committee to further study the request. The committee met on November 17, 2014, and invited public comment on the Petition. Several government agencies, advocacy groups, and private citizens provided both written and oral comments at the November meeting.

On November 19, 2014, the Board met in open session to deliberate the Petition. At that time, the Board voted to table the Petition until the January 2015 meeting. On January 5, 2015, the Board met in open session to deliberate and render a decision on the Petition. The Board voted to deny the Petition.

FACTUAL AND LEGAL BACKGROUND

Marijuana is currently listed in Schedule I under state law. See Iowa Code section 124.204(4)"m" (stating "Marijuana, except as otherwise provided by rules of the board for medicinal purposes."). Marijuana is also currently listed in Schedule II under state law. See Iowa Code section 124.206(7)"a" (stating "Marijuana when used for medicinal purposes pursuant to rules of the board."). In Iowa, marijuana is defined by Iowa law to include

all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

Iowa Code section 124.101(19). Marijuana is currently listed in Schedule I under federal law.

See 21 CFR § 1308.11(d)"23".

The Controlled Substances Act places some responsibilities on the Board as it relates to the scheduling of substances. In particular, Iowa Code section 124.203(2) provides:

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 medicinal 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.

In 2014, the Iowa General Assembly passed the Medical Cannabidiol Act. *See* Iowa Code chapter 124D. The Act permits the use of cannabidiol by patients suffering from intractable epilepsy. The Iowa General Assembly granted the authority to administer the provisions of the Act to the Iowa Department of Public Health.

ANALYSIS

Typically, the Board makes recommendations regarding the scheduling of substances to the Iowa General Assembly when the federal Drug Enforcement Agency (1) adds a new substance to a schedule, (2) moves a scheduled substance to a different schedule, or (3) removes a substance from scheduling. Essentially, the Board notifies the Iowa General Assembly of

changes in the federal scheduling of controlled substances and recommends changes in the schedules under state law to be in accordance with federal scheduling.

Despite the passage of laws regarding marijuana in several states, it remains a Schedule I controlled substance under federal law. As a matter of policy, the federal government has allowed states, through non-enforcement of federal law, to serve as laboratories of democracy by experimenting with medical marijuana programs. This, however, is a matter of policy and not of law. The federal government may change its policy at any time, thereby nullifying any laws or programs related to marijuana enacted by any state. The Board is hesitant to recommend a change in the state scheduling of a substance that directly conflicts with federal law.

Regardless of federal law, Iowa Code section 124.203 requires that the Board recommend the removal of a substance from Schedule I if the Board finds that either (1) the substance does not have a high potential for abuse, or (2) the substance has some accepted medicinal use in treatment in the United States. While the Board believes that marijuana has a high potential for abuse, it also believes that the passage of the Medical Cannabidiol Act is an affirmative recognition by the Iowa General Assembly that there is some medical use for marijuana, as it is defined by Iowa Code section 124.101(19). As a result of the Medical Cannabidiol Act, Schedule I is inappropriate for cannabidiol.

The Board is not inclined to make the broader recommendation requested by the Petition that marijuana be removed from Schedule I. Many substances can be derived from marijuana—some may have a medical use, while others may not. Therefore, in the Board's opinion, it would be more accurate to schedule each derivate after an individualized analysis. The Board points out that separately scheduling a substance that is a derivative of marijuana, such as cannabidiol, should be accompanied by an amendment to the definition of marijuana in Iowa Code section

124.101(19), explicitly excluding the derivative from the definition of marijuana, in order to avoid conflict.

The Board believes it has an obligation under the Controlled Substances Act to recommend the proper schedule for cannabidiol. Iowa Code section 124.205 establishes the criteria for including a substance in Schedule II. The criteria are: (1) the substance has a high potential for abuse, (2) the substance currently has accepted medical use with severe restrictions in the United States, and (3) abuse of the substance may lead to severe psychic or physical dependence. The Board feels that cannabidiol meets the criteria for Schedule II, and thus recommends to the Iowa General Assembly that cannabidiol, as defined by Iowa Code section 124D.2(1), be placed in Schedule II.

The Board believes that, if the Iowa General Assembly chooses to expand the Medical Cannabidiol Act or implement a medical marijuana program, a coalition of stakeholders should be established to further study the potential medicinal uses of marijuana or its derivatives in Iowa. These stakeholders should include, but not be limited to, the Office of Drug Control Policy, the Iowa Boards of Medicine and Pharmacy, law enforcement agencies, academia, addiction treatment specialists, and patients. It is incumbent that the establishment of a program involving marijuana or its derivatives for medicinal use includes the perspectives of all of these groups. No single entity can determine what conditions marijuana or its derivatives could be used to treat, what safety measures are needed to prevent unlawful use, and the myriad of other concerns raised by a program involving marijuana or its derivatives for medicinal use in Iowa. The Board is particularly concerned about the ability of any program to establish the standardization of dosage and potency necessary to ensure patient safety and effective treatment.

The dual scheduling of marijuana under state law is a holdover from experimental marijuana research programs authorized more than thirty years ago. The dual scheduling has understandably led to confusion as to the Board's authority to promulgate rules authorizing the legal use of medical marijuana. The Board does not believe it was the intention of the Iowa General Assembly for the Board to unilaterally establish and implement a medical marijuana program in Iowa. This is evidenced by the fact that the Department of Public Health was vested with the authority to implement the Medical Cannabidiol Act. To avoid confusion, the Board recommends that the phrase "except as otherwise provided by rules of the board for medicinal purposes" be deleted from Iowa Code section 124.204(4)"m". In addition, the Board recommends that either the entirety of Iowa Code section 124.206(7)"a" be deleted, or, at a minimum, the phrase "pursuant to rules of the board" be deleted from Iowa Code section 124.206(7)"a".

ORDER

For the reasons stated herein, the Petition for Agency Action to Reschedule Marijuana is **DENIED.**



EDWARD MAIER
Chairperson, Iowa Board of Pharmacy

ADDENDUM B

**RECOMMENDATION TO THE
IOWA GENERAL ASSEMBLY
RE: CANNABIDIOL AND MARIJUANA**

JANUARY 5, 2015

BEFORE THE IOWA BOARD OF PHARMACY

RECOMMENDATION TO THE)	
IOWA GENERAL ASSEMBLY)	RE: CANNABIDIOL AND
)	MARIJUANA
)	

FACTUAL AND LEGAL BACKGROUND

Marijuana is currently listed in Schedule I under state law. *See* Iowa Code section 124.204(4)"m" (stating "Marijuana, except as otherwise provided by rules of the board for medicinal purposes."). Marijuana is also currently listed in Schedule II under state law. *See* Iowa Code section 124.206(7)"a" (stating "Marijuana when used for medicinal purposes pursuant to rules of the board."). In Iowa, marijuana is defined by Iowa law to include

all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

Iowa Code section 124.101(19). Marijuana is currently listed in Schedule I under federal law. *See* 21 CFR § 1308.11(d)"23".

The Controlled Substances Act places some responsibilities on the Board as it relates to the scheduling of substances. Iowa Code section 124.201 states, in part, "the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in section 124.204, 124.206, 124.208, 124.210, or 124.212, which it deems necessary or advisable." In addition, Iowa Code section 124.203(2) provides:

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 medicinal 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.

In 2014, the Iowa General Assembly passed the Medical Cannabidiol Act. *See* Iowa Code chapter 124D. The Act permits the use of cannabidiol by patients suffering from intractable epilepsy. The Iowa General Assembly granted the authority to administer the provisions of the Act to the Iowa Department of Public Health.

RECOMMENDATION

Typically, the Board makes recommendations regarding the scheduling of substances to the Iowa General Assembly when the federal Drug Enforcement Agency (1) adds a new substance to a schedule, (2) moves a scheduled substance to a different schedule, or (3) removes a substance from scheduling. Essentially, the Board notifies the Iowa General Assembly of changes in the federal scheduling of controlled substances and recommends changes in the schedules under state law to be in accordance with federal scheduling.

Despite the passage of laws regarding marijuana in several states, it remains a Schedule I controlled substance under federal law. As a matter of policy, the federal government has allowed states, through non-enforcement of federal law, to serve as laboratories of democracy by experimenting with medical marijuana programs. This, however, is a matter of policy and not of law. The federal government may change its policy at any time, thereby nullifying any laws or programs related to marijuana enacted by any state. The Board is hesitant to recommend a change in the state scheduling of a substance that directly conflicts with federal law.

Regardless of federal law, Iowa Code section 124.203 requires that the Board recommend the removal of a substance from Schedule I if the Board finds that either (1) the substance does

not have a high potential for abuse, or (2) the substance has some accepted medicinal use in treatment in the United States. While the Board believes that marijuana has a high potential for abuse, it also believes that the passage of the Medical Cannabidiol Act is an affirmative recognition by the Iowa General Assembly that there is some medical use for marijuana, as it is defined by Iowa Code section 124.101(19). As a result of the Medical Cannabidiol Act, Schedule I is inappropriate for cannabidiol.

The Board is not inclined to make the broader recommendation that marijuana be removed from Schedule I. Many substances can be derived from marijuana—some may have a medical use, while others may not. Therefore, in the Board's opinion, it would be more accurate to schedule each derivate after an individualized analysis. The Board points out that separately scheduling a substance that is a derivative of marijuana, such as cannabidiol, should be accompanied by an amendment to the definition of marijuana in Iowa Code section 124.101(19), explicitly excluding the derivative from the definition of marijuana, in order to avoid conflict.

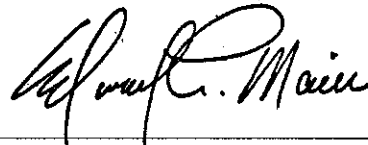
The Board believes it has an obligation under the Controlled Substances Act to recommend the proper schedule for cannabidiol. Iowa Code section 124.205 establishes the criteria for including a substance in Schedule II. The criteria are: (1) the substance has a high potential for abuse, (2) the substance currently has accepted medical use with severe restrictions in the United States, and (3) abuse of the substance may lead to severe psychic or physical dependence. The Board feels that cannabidiol meets the criteria for Schedule II, and thus recommends to the Iowa General Assembly that cannabidiol, as defined by Iowa Code section 124D.2(1), be placed in Schedule II.

The Board believes that, if the Iowa General Assembly chooses to expand the Medical Cannabidiol Act or implement a medical marijuana program, a coalition of stakeholders should

be established to further study the potential medicinal uses of marijuana or its derivatives in Iowa. These stakeholders should include, but not be limited to, the Office of Drug Control Policy, the Iowa Boards of Medicine and Pharmacy, law enforcement agencies, academia, addiction treatment specialists, and patients. It is incumbent that the establishment of a program involving marijuana or its derivatives for medicinal use includes the perspectives of all of these groups. No single entity can determine what conditions marijuana or its derivatives could be used to treat, what safety measures are needed to prevent unlawful use, and the myriad of other concerns raised by a program involving marijuana or its derivatives for medicinal use in Iowa. The Board is particularly concerned about the ability of any program to establish the standardization of dosage and potency necessary to ensure patient safety and effective treatment.

The dual scheduling of marijuana under state law is a holdover from experimental marijuana research programs authorized more than thirty years ago. The dual scheduling has understandably led to confusion as to the Board's authority to promulgate rules authorizing the legal use of medical marijuana. The Board does not believe it was the intention of the Iowa General Assembly for the Board to unilaterally establish and implement a medical marijuana program in Iowa. This is evidenced by the fact that the Department of Public Health was vested with the authority to implement the Medical Cannabidiol Act. To avoid confusion, the Board recommends that the phrase "except as otherwise provided by rules of the board for medicinal purposes" be deleted from Iowa Code section 124.204(4)"m". In addition, the Board recommends that either the entirety of Iowa Code section 124.206(7)"a" be deleted, or, at a minimum, the phrase "pursuant to rules of the board" be deleted from Iowa Code section 124.206(7)"a". References to board rules in Iowa Code sections 124.204(4)"u" and 124.207 should also be deleted to ensure consistency.

Attached are proposed legislative changes reflecting the Board's recommendations described herein.

A handwritten signature in black ink, appearing to read "Edward C. Maier". The signature is written in a cursive style with a large initial "E".

EDWARD MAIER
Chairperson, Iowa Board of Pharmacy

***Proposed Legislative Changes relating to Controlled Substances
January 14, 2015***

An Act making changes to controlled substances schedules and making penalties applicable.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 124.101, subsection 19, Iowa Code 2015, is amended to read as follows:

19. "*Marijuana*" means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. It does not include cannabidiol, as defined in Iowa Code section 124D.2, subsection 1.

Section 2. Section 124.204, subsection 4, paragraph "m," Iowa Code 2015, is amended to read as follows:

m. ~~Marijuana, except as otherwise provided by rules of the board for medicinal purposes.~~

Section 3. Section 124.204, subsection 4, paragraph "u," Iowa Code 2015, is amended to read as follows:

u. Tetrahydrocannabinols, ~~except as otherwise provided by rules of the board for medicinal purposes,~~ meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (Cannabis plant) as well as synthetic equivalents of the substances contained in the Cannabis plant, or in the resinous extractives of such plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

- (1) 1 cis or trans tetrahydrocannabinol, and their optical isomers.
- (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
- (3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

Section 4. Section 124.204, subsection 7, Iowa Code 2015, is deleted in its entirety as follows:

~~7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.~~

Section 5. Section 124.206, subsection 7, Iowa Code 2015, is amended by adding the following new paragraph:

NEW PARAGRAPH: xx. Cannabidiol, as defined in Iowa Code section 124D.2, subsection 1.

Section 6. Section 124.206, subsection 7, paragraph "a," Iowa Code 2015, is deleted in its entirety as follows:

- a. ~~Marijuana when used for medicinal purposes pursuant to rules of the board.~~

ADDENDUM C

**RULING ON PETITION
FOR JUDICIAL REVIEW**

**CARL OLSEN
DES MOINES, IOWA**

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

CARL OLSEN,

Petitioner,

vs.

IOWA BOARD OF PHARMACY,

Respondent

Case No.: CVCV047867

**RULING ON PETITION FOR
JUDICIAL REVIEW**

Hearing in this case was held October 24, 2014. Petitioner Carl Olsen appeared personally. Megan Gavin appeared for respondent, Iowa Board of Pharmacy.

Introduction

This is a judicial review action from a November 6, 2013 ruling of the Iowa Board of Pharmacy. Mr. Olsen petitioned the Board to recommend to the 2014 Iowa General Assembly that it remove marijuana from Schedule I of the Uniform Controlled Substances Act, Iowa Code Chapter 124. He wishes to clear the way for medical use of marijuana in Iowa. The Board denied Mr. Olsen's petition.

Olsen timely filed this judicial review action in Polk County District Court. He asserts that the Board erred because it has a duty under Iowa Code Chapter 124 to recommend reclassification of marijuana. He filed an amended petition June 17, 2014. Mr. Olsen asks that the court set aside the Board's November 6, 2013 ruling, enter a declaratory judgment that marijuana has accepted medical use in treatment in the United States, and issue a writ of mandamus requiring the Board to recommend removal of marijuana from Schedule I of the Iowa Controlled Substances Act. The Board resists.

The record consists of attachments filed with the Petition for Judicial Review, and the Proposed Agency Record filed by respondent on July 25, 2014.

Statement of Facts

In 2010, at the request of Mr. Olsen, the Iowa Board of Pharmacy recommended to the legislature that it reclassify marijuana from a Schedule I controlled substance to a Schedule II controlled substance, under Iowa Code Chapter 124. The legislature has never adopted this recommendation.

In general, Schedule I controlled substances are illegal to sell or possess in the State of Iowa, and include such substances as opium derivatives and hallucinogens. *See* Iowa Code § 124.204(2013).¹ The Board of Pharmacy may recommend to the legislature that it remove a controlled substance from Schedule I, or reclassify a substance to Schedule II, which would allow for its use for medicinal purposes. *See* Iowa Code §§ 124.203, 124.205.

In August 2012 Olsen again petitioned the Board of Pharmacy to recommend removal of marijuana from Schedule I. In November 2012, the Board denied that request, stating “that the supporting documentation did not contain sufficient, new scientific information to warrant recommending the reclassification of marijuana this year.” (Cited in Ruling and Order on Petition for Judicial Review, Polk County Case No. CVCV045505). Olsen sought judicial review of that ruling. In February 2014, the Polk County District Court denied Mr. Olsen’s petition for judicial review, holding that the Board’s ruling was not irrational or illogical on its face, and that the record before the District Court was insufficient to determine whether the Board’s decision was in error. (Case No. CVCV045505, February 18, 2014 Ruling and Order on Petition for Judicial Review.)

In July 2013, Olsen again petitioned the Pharmacy Board to recommend that the legislature remove marijuana from Schedule I. He cited a number of scientific studies, as well as statutes from other states which allow medical use of marijuana. In November 2014, the Board denied Olsen’s request. This ruling is attached to plaintiff’s petition. It states:

¹ References in this ruling are to the 2013 Code of Iowa in effect at the time the Board ruled on Olsen’s petition, unless otherwise noted.

The Board recommended the rescheduling of marijuana in 2010. The Board recognized at that time and continues to recognize that the scheduling of controlled substances is ultimately a decision for the Iowa Legislature. The General Assembly took no action on the Board's 2010 recommendation. During the 2013 session, the legislature considered but did not act upon two bills calling for the rescheduling of marijuana. On November 6, 2013, the Board concluded that it was not advisable or appropriate to recommend the rescheduling of marijuana in 2014.

Ex. 1.

Motions for Judicial Notice

Olsen asks the court to take judicial notice of: 1) a law enacted in North Carolina in July 2014, 2) a law enacted in New York in July 2014, and 3) a law enacted in Missouri in July 2014.

The Board resists.

The court may consider such evidence as it deems appropriate in judicial review of "other agency action", i.e. actions other than evidentiary hearings. Iowa Code § 17A.19(7). However, the court's discretion to hear additional evidence "is for the limited purpose of 'highlighting what actually occurred in the agency in order to facilitate the court's search for errors of law or unreasonable, arbitrary, or capricious action.'" *Office of Consumer Advocate v. Iowa Utilities Board*, 770 N.W.2d 334, 343 (Iowa 2009) (internal citations omitted). The additional evidence is not to be used to retry the factual issues in district court. *Id.*

Because the laws that petitioner asks the court to consider were enacted after the Board's ruling was issued in November 2013, they have no relevance to what actually happened before the Board. Therefore, the three motions to take judicial notice are overruled.

Petitioner also cites legislation that was passed by the Iowa legislature in 2014 allowing use of cannabinoid oil for treatment of epilepsy. 2014 Iowa Acts, SF 2360. This legislation was also enacted after the agency action at issue here, and is not directly relevant to the Board's 2013 decision.

On December 6, 2014, Mr. Olsen filed a motion asking the court to consider a section of the statute that he had not cited previously – Section 124.208(9)(b). This code section was in effect when the Board issued its decision in November 2013. The court will consider this statute in ruling on this matter.

Standard of Review

This is a proceeding for judicial review of administrative agency action under Iowa Code Chapter 17A. Petitioner may obtain relief from agency action if his substantial rights are prejudiced, and the agency has violated any of the subsections of Code Section 17A.19(10). Olsen asserts that the Board's decision is based upon 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, in violation of Iowa Code Section 17A.19(10)(c).²

The Board argues that the decision to recommend rescheduling of marijuana is a decision that is vested by a provision of law in the Board's discretion, and thus its decision should be reversed only if it is irrational, illogical, or wholly unjustifiable, pursuant to Section 17A.19(10)(D). The court must not give any deference to the agency's view of whether it is vested with discretion to interpret the law. Iowa Code § 17A.19(11)(a).

The Iowa Supreme Court has stated:

Our review of authorities on this subject has confirmed our belief that each case requires a careful look at the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes. It is generally inappropriate, in the absence of any explicit guidance from the legislature, to determine whether an agency has the authority to interpret an entire statutory scheme. As we have seen, it is possible that an agency has the authority to interpret some portions of or certain specialized language in a statute, but does not have the authority to interpret other statutory provisions. Accordingly, broad articulations of an agency's authority, or lack of authority,

² Olsen's petition for judicial review alleges violations of additional provisions of Section 17A.19(10). *See Id.*, ¶ 31. However, he did not brief or argue these additional alleged violations. Therefore the court deems them waived.

should be avoided in the absence of an express grant of broad interpretive authority.

Renda v. Iowa Civil Rights Com'n, 784 N.W.2d 8, 13 -14 (Iowa 2010). The Court in *Renda* set forth guidelines for courts to follow, including 1) whether the statutory provision being interpreted is a substantive term within the special expertise of the agency; 2) whether the provisions to be interpreted are found in a statute other than the statute the agency has been tasked with enforcing; and 3) whether the term has an independent legal definition that is not uniquely within the subject matter expertise of the agency. *Renda*, 784 N.W.2d at 14.

The court has reviewed the specific authority granted to the Board to make annual recommendations for reclassification of controlled substances to the legislature (Sections 124.201(1) and (2)); the statutes listing marijuana as controlled substances (Iowa Code § 124.204(4)(m), 124.206(7)(a), and 124.208(9)(b)); and the statutes dealing with reclassification or deletions of controlled substances (Code Sections 124.203 and 124.205). In addition, Iowa Code Section 135.31 gives the Board of Pharmacy policymaking authority. Five of the seven members of the board must be licensed pharmacists. Iowa Code § 147.(1)(e). The statutory scheme for classification of controlled substances is highly technical and relies heavily on the expertise of the Board. Based upon these statutes, the court concludes the Board is given discretion to make recommendations for rescheduling controlled substances, and the decision of the Board is entitled to appropriate deference under Section 17A.19(10) and (11).

Therefore, the court will reverse the agency's decision only if it is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(I). Review of agency action under the irrational, illogical, or wholly unjustifiable standard is highly deferential. *Iowa Dental Ass'n v. Iowa Ins. Div.*, 831 N.W.2d 138, 142-43 (Iowa 2013).

Discussion and Analysis

This case turns on interpretation of several provisions of Iowa Code Chapter 124, the Uniform Controlled Substances Act. *See* Iowa Code Section 124.601.

Chapter 124 creates five schedules for controlled substances. Schedule I substances are listed in Section 124.204, and are the most highly regulated substances. Schedule I substances include opiates and hallucinogenic substances. Marijuana is listed under Schedule I as follows: “Marijuana, except as otherwise provided by rules of the board [of pharmacy] for medicinal purposes.” Iowa Code § 124.204(4)(m). The Code section also states, “Exclusions. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.” Iowa Code § 124.204(7).

Schedule II controlled substances are listed in Section 124.206, and include substances which are addictive, but frequently used for medical purposes such as opiates, codeine, hydrocodone, and morphine. *See* Iowa Code § 124.206(2). Marijuana is also listed in Schedule II as follows: “Marijuana when used for medicinal purposes pursuant to rules of the board.” Iowa Code § 124.206(7)(a).

Schedule III controlled substances are listed in Code Section 124.208. They include stimulants, depressants, and narcotic drugs. *See* Iowa Code § 124.208(2). Dronabinol, a derivative of the cannabis plant, is listed in Schedule III. Iowa Code § 124.208(9)(b). This Code section states that the referenced drug – ANDA – has been approved the U.S. Food and Drug Administration. *Id.*

Thus the legislature has recognized that the Board may enact rules for medical use of marijuana under both Schedule I and Schedule II. To date the Board of Pharmacy has not enacted rules relating to the medical use of marijuana. The history of these enactments

concerning marijuana's listing in Schedule I and Schedule II of Chapter 124 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). In that case the court considered a different issue than is presented here, but the discussion of the statutory history concerning inclusion of marijuana under Schedules I and II is instructive. This is an issue which has been raised, studied, and considered in the past in Iowa. *See Id.*

The Board is given the duty to make recommendations to the legislature for deletions and revisions to the schedules of controlled substances "which it deems necessary or advisable."

Iowa Code Section 124.201(1). That section states:

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 section 124.204, 124.206, 124.208, 124.210, or 124.212, ***which it deems necessary or advisable***. In making a recommendation to the general assembly regarding a substance, the board shall consider the following:

.....

2. After considering the above factors, the board shall make a recommendation to the general assembly, specifying the change which should be made in existing schedules, if it finds that the potential for abuse or lack thereof of the substance is not properly reflected by the existing schedules.

Iowa Code § 124.201(1)(emphasis added).

In addition, Iowa Code Section 124.203 states that the Board shall recommend to the legislature that it place a substance in Schedule I if it has a high potential for abuse, and has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision. Iowa Code § 124.203(1) (2013). The statute also states:

"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(2).

Iowa Code Section 124.205 states that the Board shall recommend to the legislature that is place a substance in Schedule II if it has 1) a high potential for abuse, 2) currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions, and 3) abuse of the substance may lead to severe psychic or physical dependence. Iowa Code § 124.205(1).

Petitioner argues that, based on the record presented to the Board with his petition, the Board is required to conclude that marijuana has “currently accepted medical use in treatment in the United States,” within the meaning of Iowa Code Section 124.203(1). His petition to the Board includes citations to the record made before the Board in 2010 when it voted to recommend rescheduling marijuana from Schedule I to Schedule II. He also cited 19 states which accepted medical use of marijuana in treatment and a CD of scientific literature on this topic. (Petition for Agency Action, pp. 7-8.) He then argues that, under subsection (2) of Section 124.205, the Board must recommend removal of marijuana from the list of Schedule I controlled substances.

In construing statutes, the court must ascertain legislative intent. *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 194 (Iowa 2012). In doing so, the court is to consider the language used in the statute, the object the legislature sought to accomplish, and the wrong the general assembly sought to remedy. *Id.* The court searches for legislative intent as shown by what the legislature said, rather than what it should or might have said. *Auen V. Alcoholic Beverages Div., Iowa Dept. of Commerce*. 679 N.W.2d 586, 590 (Iowa 2004). If a term is not defined in a statute, the term is given its ordinary and common meaning by considering the

context within which it is used. *Id.* If possible, a statute must be construed so as to give effect to all its provisions. *State v. Harrison*, 325 N.W.2d 770, (Iowa Ct. App. 1982); *see also State v. Netzer*, 579 S.W.2d 170 (Mo. Ct. App. S.D. 1979) (stating provisions of Uniform Controlled Substances Act must be construed together).

Chapter 124 is based on the Uniform Controlled Substances Act, and is to be construed to carry out its general purpose of making uniform the law of those states which enact it. Iowa Code §§ 124.601, 124.602. “The Uniform Controlled Substances Act was drafted to maintain uniformity between the laws of the several states and those of the federal government and is designed to complement the federal law and provide an interlocking trellis of federal and state law to enable government at all levels to control more effectively the drug abuse problem.” Prefatory Note to Uniform Controlled Substances Act (1990). One of the major purposes of the federal Controlled Substances Act is to prevent illegal manufacture, distribution, and possession of controlled substances that have a substantial and detrimental effect on the health and welfare of the American people. 21 U.S.C. § 801.

Petitioner focuses on the language of Section 124.203(2), which states that the legislature “shall” recommend deletion of a controlled substance from Schedule I if it does not meet the criteria concerning medical use in treatment in the United States. However, this narrow reading of the statute ignores the broad language of Section 124.201, which states that the Board shall annually recommend revisions to the schedules of substances “which it deems necessary or advisable.” Sections 124.201, .203, and .205 must be read to give effect to all of them. In doing so, the court concludes the legislature intended that the Board have discretion to recommend whether a controlled substance should be removed from Schedule I, or reclassified from Schedule I to Schedule II. This authority is clearly stated in subsection (201). The criteria for

reclassification or deletion are set forth in subsections (203) and (205). Petitioner's interpretation would nullify the language in Section 124.201.

Because the Board has discretion, petitioner must show that the Board abused its discretion in denying his petition for agency action. The Board made a finding that it did not deem it "advisable or appropriate to recommend the rescheduling of marijuana in 2014." This is within the discretion of the Board, and petitioner has not shown that this decision is irrational, illogical, or wholly unjustifiable. While a previous iteration of the Board did make such a recommendation to the legislature in 2010, in subsequent years the Board has declined to do so. This is within its discretion.

The court has also considered Section 124.208(9) and its listing of dronabinol, derived from the cannabis plant, as a Schedule III controlled substance. However, this does not cause the court to change its opinion that it is within the discretion of the Board whether to recommend marijuana be removed from Schedule I, for the reasons set forth above.

For the reasons stated above, the petition for judicial review should be dismissed.

IT IS ORDERED that the petition for judicial review is dismissed, with costs taxed to petitioner.

Dated this 10th day of December, 2014.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV047867
Case Title CARL OLSEN VS IOWA BOARD OF PHARMACY

So Ordered

A handwritten signature in cursive script, appearing to read "Eliza Ostrom".

Eliza Ostrom, District Court Judge,
Fifth Judicial District of Iowa