130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
June 4, 2017

Andrew Funk
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, IA 50309-4688

Re: Cannabis Extracts
Your Letter of June 2, 2017

Mr. Funk,

Because the board seems to have taken the action I requested (determining "whether cannabis extracts are new substances" and taking "appropriate action"), it does appear that I have no further cause of action at this time.

Under the Iowa Open Records Law § 22.1 et seq., I am requesting the minutes from the board meeting where this was matter was discussed and the notice that was received from the DEA.

Thank you very much!

Sincerely,

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933
carl@carl-olsen.com
http://carl-olsen.com/
http://iowamedicalmarijuana.org/

cc: Iowa Governor Kim Reynolds
U.S. Attorney General Jeff Sessions

Iowa Board of Pharmacy

ANDREW FUNK, PHARM.D.
EXECUTIVE DIRECTOR

May 31, 2017

Carl Olsen
130 E Aurora Ave
Des Moines IA 50313

RE: Petition for Agency Action

Mr. Olsen,

On May 12, 2017, you submitted a Petition for Agency Action to the board requesting the board to determine whether cannabis extracts are new substances designated as controlled substances under federal law, and to take appropriate action. The Iowa Administrative Procedure Act (Iowa Code chapter 17A) does not establish a right or a procedure for an individual to petition for agency action of this nature.

As you are aware, "[i]f any *new* substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the federal register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation." Iowa Code § 124.201(4) (emphasis added). The board regularly receives notices of scheduling changes from the Drug Enforcement Administration (DEA).

On December 14, 2016, the DEA published a final rule establishing a new drug code for marihuana extract. Establishment of a New Drug Code for Marihuana Extract, 81 Fed. Reg. 90,194 (December 14, 2016) (to be codified at 21 C.F.R. 1308.11(d)(58). According to the publication, the new code number will allow DEA and registered entities to track quantities of marihuana extract separately from quantities of marihuana. The DEA indicated a new drug code was needed because "[t]he United Nations Conventions on international drug control treats extracts from the cannabis plant somewhat differently than marihuana or tetrahydrocannabinols. The creation of a new drug code in the DEA regulations for marihuana extracts will allow for more appropriate accounting of such materials consistent with treaty provisions." *Id.* at 90,195. The notice indicates "[e]xtracts of marihuana will *continue* to be treated as Schedule I controlled substances." *Id.* at 90,194 (emphasis added).

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Prior to this final rule, marihuana extracts were Schedule I controlled substances under federal law. After enactment of this final rule, marihuana extracts continue to be Schedule I controlled substances under federal law. As a result, no "new" substance has been designated as a controlled substance under federal law. The board declines to take any action as a result of the enactment of 21 C.F.R. section 1308.11(d)(58) or in response to your Petition.

Sincerely,

Andrew Funk, Pharm.D.
Executive Director
Iowa Board of Pharmacy

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IOWA BOARD OF PHARMACY

MARIJUANA EXTRACT SCHEDULING	)	**PETITION FOR**
	)	**AGENCY ACTION**

Request:

The petitioner requests the board to determine whether cannabis extracts are new substances designated as controlled substances under federal law, and to take appropriate action.

Iowa Code § 124.201(4) (2017):

If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the federal register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under this chapter by the board, control under this chapter is stayed until the board publishes its decision. If a substance is designated as controlled by the board under this subsection the control shall be temporary and if, within sixty days after the next regular session of the general assembly convenes, the general assembly has not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified.

Notice of federal scheduling:

https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29941.pdf

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding paragraph (d)(58) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *
(58) Marihuana Extract—(7350)

Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant.

* * * * *

Dated: December 7, 2016.
Chuck Rosenberg,
Acting Administrator.
[FR Doc. 2016–29941 Filed 12–13–16; 8:45 am]
BILLING CODE 4410–09–P

Respectfully Submitted:

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