

IN THE SUPREME COURT OF IOWA

NO. 09–1789

GEORGE McMAHON and BARBARA DOUGLASS,
Petitioners-Appellants,

and

CARL OLSEN,
Intervenor-Appellant

v.

IOWA BOARD OF PHARMACY,
Respondent-Appellee.

Motion to Vacate Judgment
and Remand to District Court with Instructions

Come Now the Petitioners-Appellants, George McMahon and Barbara Douglass, and respectfully move for an order from this court vacating the final decision and judgment below and remanding this matter to the Iowa District Court of Polk County Iowa with instructions to dismiss this matter as moot, to wit:

1. The relief sought by Petitioner's in the case below was last stated as follows:

...remand of this case to the Pharmacy Board with instructions requiring the Board to recommend to the next Iowa General Assembly that marijuana be removed from Schedule I along with such other recommendations for possible listing on other schedules as may be consistent with Iowa's Controlled Substances Act.

[Petition for Further Judicial Review]

2. Notice of appeal was filed in district court on 25th day of November, 2009 from a judgment or ruling filed on October 30, 2009.

3. Subsequent to the taking of this appeal, the Iowa Pharmacy Board met and determined on its own volition to recommend “that the legislature reclassify marijuana from Schedule I of the Iowa Controlled Substance Act (Act) into Schedule II of the Act...” Minutes of the Iowa Board of Pharmacy, 2/17/2010

4. Although the Iowa Board of Pharmacy relied upon its own independent judgment in the course of making the the above recommendation, the action taken fully grants the final relief prayed for in the action now on appeal before this court. No issue of any substance remains to be settled, and the case is moot.

5. The appropriate action in this instance is to vacate the final judgment below and remand with instructions to dismiss.¹

WHEREFORE, Petitioners move this Court vacate the final decision and judgment below and to remand this case with instructions to the district court to dismiss the action without prejudice.

¹ “The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. FN2 That was said in Duke Power Co. v. Greenwood County, 299 U.S. 259, 267, 57 S.Ct. 202, 205, 81 L.Ed. 178, to be ‘the duty of the appellate court’. That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary.” U.S. v. Munsingwear, 340 U.S. 36,*40, 71 S.Ct. 104,*107, 95 L.Ed. 36 (1950).

Motion to vacate and dismiss, McMahon, et al. v. Iowa Board of Pharmacy.

Respectfully Submitted:

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CERTIFICATE OF SERVICE & FILING

The undersigned certifies that on April 8, 2010 four copies of this document were placed in the U.S. Mail for filing with the Clerk of the Iowa Supreme Court and one copy was served by mail upon opposing counsel and *pro se* litigant Carl Olsen, at the addresses shown below:

	Address	Manner of Service
Scott Galenbeck, Esq.	Assistant Iowa Attorney General 1305 E. Walnut St. Des Moines, IA 50319	regular mail
Carl Olsen	130 East Aurora Ave. Des Moines, IA 50313-3654	regular mail
Donna Humpal Clerk of Iowa Supreme Court	Iowa Judicial Branch Bldg. 1111 East Court Ave. Des Moines, IA 50319	regular mail
