

IN THE SUPREME COURT OF IOWA
No. 09-1789

CARL OLSEN,
Petitioner-Appellant,

and

GEORGE McMAHON and BARBARA DOUGLASS,
Petitioners-Appellants,

v.

IOWA BOARD OF PHARMACY,
Respondent-Appellee.

Objection to Motion to Vacate Judgment
and Remand to District Court with Instructions

Comes Now the Petitioner-Appellant, Carl Olsen, and respectfully objects to the Motion to Vacate Judgment and Remand to District Court with Instructions filed by the attorney for the Petitioners-Appellants.

The issue in the case is simple. Iowa's Uniform Controlled Substances Act, written in the early 1970s, initially classified marijuana as a controlled substance having no accepted medical use in treatment in the United States. Since 1996, a total of 14 states have accepted the medical use of marijuana in treatment by state law. All 14 of those states are "in the United States". The United States is 50 states. The phrase "in the United States" means "in any

of the 50 states”, not the erroneous interpretation “in all 50 states” made by the Board of Pharmacy at pages 7-8 of its Supplemental Order of July 21, 2009. *Grinspoon v. DEA*, 828 F.2d 881, *886 (1st Cir. 1987) (“Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state”).

Iowa must accept the statutes of other states at their face value. If the Iowa Legislature had intended the scheduling of controlled substances to be determined by whether those controlled substances have accepted medical use in Iowa, the Iowa Legislature would have written the statute that way. How difficult would it have been for the Iowa Legislature to say, “accepted medical use in treatment in Iowa”?

The two Petitioners-Appellants, George McMahon and Barbara Douglass are co-directors with Petitioner-Appellant, Carl Olsen, in an Iowa Non-Profit corporation by the name of Iowans for Medical Marijuana. The court record should include signed consent forms from the two Petitioners-Appellants, George McMahon and Barbara Douglass, allowing their attorney to move to dismiss their appeal. At this time, it does not.

Petitioner-Appellant, Carl Olsen, is seeking a declaratory judgment that marijuana is no longer legally classified in Schedule I of Iowa’s Controlled Substances Act because it would cause the state of Iowa to be in conflict with the Full Faith and Credit Clause of the U.S. Constitution which

requires Iowa to accept the laws of the other 49 states at their face value. The Iowa Administrative Code requires an administrative agency to take notice of any fact “of which judicial notice may be taken”. Iowa Code § 17.14(4). The statute of any state “shall be admitted in the courts of this state as presumptive evidence of such laws.” Iowa Code § 622.59; Iowa R. Civ. P. 1.415 (“Judicial notice; statutes”).

This Court is not bound by an administrative agency’s erroneous interpretation of law. *Birchansky v. Iowa Dept. of Public Health*, 737 N.W.2d 134, *138 (Iowa 2007) (“Although we give weight to the Department's interpretation, the meaning of any statute is always a matter of law to be determined by the court”); *Connecticut National Bank v. Germain*, 503 U.S. 249, *253-254 (1992) (“courts must presume that a legislature says in a statute what it means and means in a statute what it says there” ... “When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, *842-843 (1984) (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress”).

The District Court erred, as a matter of law, when it ruled, “this court rules that it does not believe that it can determine as a matter of law that marijuana does have ‘accepted medical use and [sic] treatment in the United

States' based upon the medical use of marijuana in thirteen states". See Ruling on Motion to Expand Ruling, November 25, 2009.

This issue has been clearly addressed by the United States Supreme Court regarding the federal Controlled Substances Act in *Gonzales v. Oregon*, 546 U.S. 243, *258 (2006) ("The Attorney General ... is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law").

Because the language in Iowa's Uniform Controlled Substances Act, "accepted medical use in treatment in the United States" is identical to the language in the federal Controlled Substances Act, the federal decisions cited herein are persuasive. The Iowa District Court failed to give any explanation why it refused to find that marijuana has accepted medical use in treatment in the United States as a matter of law based on the statutes of 13 states in the United States.

I am not requesting the court to dismiss my appeal. I filed this appeal pro se and separately from the Petitioners-Appellants.

WHEREFORE, Petitioner-Appellant, Carl Olsen, moves this Court to deny the Motion to Vacate Judgment and Remand to District Court with Instructions.

Dated: April 8, 2010.

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 counsel for Petitioners-Appellants at the addresses shown below:

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