

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.

Resistance to Board of Pharmacy's Motion to Dismiss

Comes Now the Petitioner-Appellant, Carl Olsen, and respectfully resists the Iowa Board of Pharmacy's Motion to Dismiss, agreeing in part with the Motion to Vacate Judgment and Remand to District Court with Instructions filed by the attorney for the Appellants, George McMahon and Barbara Douglass.

1. The minutes from the February 17, 2010, Iowa Board of Pharmacy meeting in no way satisfy the requirements of the Iowa Administrative Procedures Act, Iowa Code Chapter 17A, particularly Iowa Code § 17A.16(1), because they fail to include any "findings of fact or conclusions of law, separately stated,"

“accompanied by a concise and explicit statement of underlying facts supporting the findings,” and “an explanation of why the relevant evidence in the record supports each material finding of fact.”

2. The Iowa Board of Pharmacy says the Petitioners, George McMahon and Barbara Douglass, are moving to dismiss because they are satisfied the meeting minutes of the Iowa Board of Pharmacy’s February 17, 2010, meeting resolve all of this issues in the appeal, but George McMahon has filed a Motion to Join Carl Olsen’s civil action in Iowa District Court, CV 8156, complaining about the inadequacy of the Board of Pharmacy’s February 17, 2010, meeting minutes. See Exhibit #1 attached to this resistance.

FACTS

There are two separate legal arguments involved in this case:

1. Olsen’s original petition to reclassify marijuana, filed with the Board of Pharmacy in May of 2008, was based on the sole criteria in Iowa Code § 124.203(2). Olsen’s argument was legally binding on both the Board of Pharmacy and the state of Iowa.
2. The Board rejected Olsen’s petition, and conducted its own proceedings based, *inter alia*, on the criteria in Iowa Code §

124.201(1). The Board's recommendation to reclassify marijuana on February 17, 2010, is not legally binding on the state of Iowa, and it is insufficient on its face for failure to comply with Iowa Code § 17A.16(1) even if it were legally binding.

ARGUMENT

What the Board of Pharmacy is attempting to do is use the 8 criteria in Iowa Code § 124.201(1) to determine the question of whether marijuana has accepted medical use in treatment in the United States, in total disregard for the laws in 14 states which have accepted it.

The Iowa Legislature did not, and could not, give the Board of Pharmacy the power to determine the laws in other states. State laws are to be accepted on their face value pursuant to the administrative rules of evidence, the civil court rules of evidence, and the Full Faith and Credit Clause of the U.S. Constitution.

The most that can be determined from the 8 criteria in Iowa Code § 124.201(1) is whether a substance has accepted medical use in treatment in Iowa, which is not what the statute says.

It would be appropriate for the Board of Pharmacy to use the 8 criteria in Iowa Code § 124.201(1) to determine whether a substance belongs in Iowa Code §§ 124.206, 124.208, 124.210, or 124.212, because all of those categories include substances which have accepted medical use in treatment in the

United States. The only category which is determined by the laws of other states is Iowa Code § 124.204, and the criteria in Iowa Code § 124.203 clearly state that category is determined by what goes on outside of the state of Iowa.

WHEREFORE, Petitioner-Appellant, Carl Olsen, moves this Court to deny the Board of Pharmacy's Motion to Dismiss and the ACLU of Iowa's Motion to Vacate Judgment and Remand to District Court with Instructions.

Dated: April 23, 2010.

Respectfully submitted:

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CERTIFICATE OF SERVICE & FILING

The undersigned certifies that on April 23, 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:

Iowa Board of Pharmacy, Respondent-Appellee	Scott Galenbeck, Esq. Assistant Attorney General 1305 E. Walnut Street Des Moines, IA 50319 Telephone: 515-281-6658 Facsimile: 515-281-7551 Email: scott.galenbeck@ag.state.ia.us
George McMahon, Barbara Douglass, Petitioners-Appellants	Randall C. Wilson, Esq. ACLU of Iowa Foundation 901 Insurance Exchange Building Des Moines, IA 50309-2316 Telephone: 515-243-4032 Facsimile: 515-243-8506 Email: randall.wilson@aclu-ia.org

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IN THE IOWA DISTRICT COURT
IN AND FOR
POLK COUNTY IOWA

CARL OLSEN,
Petitioner,

No. CV 8156

vs.

IOWA BOARD OF PHARMACY,
Respondent.

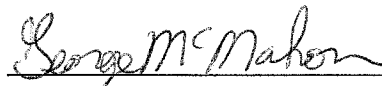
MOTION TO JOIN
Iowa Rule of Civil Procedure 1.232

Comes now George McMahon, who respectfully moves the Court pursuant to Iowa Rule of Civil Procedure 1.232 for leave to join the petitioner in the Petition for Writ of Mandamus filed pursuant to Iowa Code Section 17A. George McMahon respectfully informs the Court that he is also an original petitioner in the agency action presently before the Iowa Supreme Court in *McMahon v. Iowa Board of Pharmacy*, No. 09-1789, and is a real party in interest.

George McMahon adopts the Petition for Writ of Mandamus in its entirety.

Dated this 22 day of April, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on or before April 23rd, 2010, I served the other parties to this action with notice of George McMahon's Motion to Join by mailing or hand delivering true copies to all parties of record at the addresses shown below:

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