

1 8:48 AM fin 2:15 PM 6/2/2009

2 Notes from recording Board of Pharmacy 060109 (19 m 42 s)

3 Susan Frey (Board Member - acting Chair):

4 We'll resume our meeting. Next on the agenda is the reconsideration of the McMahon et al vs. Iowa
5 Board of Pharmacy Decision; Scott, would you like to lead us into the discussion, please?

6 Scott Galenbeck (Assistant Attorney General and Counsel to Iowa Board of Pharmacy):

7 Yeah, absolutely. The task before the board today is really quite simple; the decision, remember, that,
8 uh, this is a case that went to the district court on a judicial review petition. And it was heard by the
9 district court and it was remanded to the Board of pharmacy for a Finding and a specific finding. So,
10 what, the ruling from Judge Novak directed the board to do is contained in the last sentence of the
11 order. And that order – Judge Novak's ruling states, "The board must determine whether the evidence
12 presented by petitioner is sufficient to support a finding that marijuana has accepted medical use in the
13 United States and does not lack accepted safety for use in treatment under medical supervision. A
14 couple sentences before that the judge stated if the board believes that evidence presented by
15 petitioner was insufficient to support such a finding it should have stated such in its order.

16 So what the district judge remanded to the board is a directive that the board make a finding on the
17 record that has been previously presented. And as I am fond of saying that the record basically has four
18 walls, now. It consists of what was presented at the prior meeting and ... I was going to ask maybe if we
19 could have this gentleman sit rather than walk through the room taking pictures... yes please, thank you.

20 The record consists of what was presented to the pharmacy board, previously. That is a, there was a
21 brief period of testimony by Mr. Olsen, there was some testimony by Mr. McMahon. There was, there
22 were some documents that were presented by Mr. Olsen. He filed those in the form of some briefs and
23 in particular significance in Mr. Olsen's eyes he presented to the board a copy of an administrative law
24 decision from the 1980's; and that was his evidence in support of his contention that there is accepted
25 medical use in the United States of Marijuana.

26 So, you have testimony from Mr. Olsen and Mr. McMahon; you have the transcript of the testimony.
27 You've been supplied again the briefs and the arguments that are contained in those briefs and again
28 the argument is basically that there are 13 states that in some manner have authorized marijuana use
29 and a 1988 decision by an administrative law judge. Those are the things that the board needs to
30 consider in reaching a decision as to whether there is sufficient evidence to support a finding that
31 marijuana has an accepted medical use in the United States and does not lack accepted safety for use
32 and treatment under medical supervision. I think you may also consider the credibility of the witnesses.
33 You saw Mr. McMahon. You heard from Mr. Olsen. Mr. Olsen did not testify that he is a user of medical
34 marijuana or medical ... he doesn't ... he did not testify that he uses marijuana for medical purposes. So
35 he's here as some kind of an advocate for the drug, or was here.

1 And so you have the duty now, in light of this remand to consider the evidence and come to some
2 conclusion about what the evidence supports as a finding. So if you have questions about the process
3 and the remand from the district court If you don't have any questions about the process I'll just turn
4 it over to you and have you proceed.

5 Susan Frey:

6 Ok, so, as Scott mentioned we have all had an opportunity to review the records that were submitted in
7 the original petition. I would entertain comments from the board members ... their thoughts on this
8 information. And, if, I guess I ... would like to hear your thoughts on this reconsideration.

9 Margaret Whitworth (Board Member):

10 If we are to be responding ... of evidence; I am not certain that what is occurring in 13 other states and
11 basis of which I am not familiar and that combined with a 1980's administrative law judge opinion – I
12 don't know that that constitutes a sufficient case; I most of all note that a lack of science and any up-to-
13 date more recent information ... that isn't what we're talking about here. We're talking about the basic,
14 the basic case. And we can't ... we needed to say that we should have so stated that there was ... that
15 the evidence was insufficient. Because we need to state that the evidence

16 Ed Maier (Board Member):

17 Being a health care provider, ... as we take a look at what was presented at this hearing, I have a very
18 difficult time saying that there was any type of scientific evidence-based type of evidence given to us
19 that day. The fact that the other states have done this does not mean that Iowa has to follow suit. We
20 need to have a lot of evidence – more evidence, probably some on both sides of this issue presented to
21 us before I would feel that sufficient evidence has been presented to us to make a decision.

22 DeeAnn Wedemeyer-Oleson (Board Member):

23 I would agree with that. I think that ... his evidence – it actually was not evidence. It was woefully
24 lacking. The burden to provide evidence for a decision was on him. There was next to no evidence
25 provided to us. His argument that twelve other states have allowed medical marijuana use in some
26 format in and of itself is not justification to do that in this state. You know, I ... ever since this case came
27 up I liken it a lot to when I was a junior in high school. And I pleaded to my dad that my ... the time I
28 should be allowed to stay out at night should be extended to one o'clock in the morning. And I said
29 because I was a junior in high school and all my other friends got to stay up until one o'clock in the
30 morning. And he said, "Well, if all your friends jumped off the bridge, does that mean you should jump
31 off the bridge?" So, to me this whole other 12 what is now 13 states allowing medical marijuana use is
32 not at all sufficient to allow the Board of Pharmacy to make a decision.

33 Mark Anliker (Board Member):

34 I had very similar thoughts to what DeeAnn had Having raised three teenagers, the "everybody's
35 doing it" line just didn't cut it with me. And I guess I'm in the same camp. I'm willing to look at science;

1 this isn't going to be that profound (another reporter's microphone placed in front of him). I'm willing
2 to look at scientific evidence pro and con. But, as Scott said, we're dealing with the record that we've
3 got in hand; and the record's not that strong.

4 Ann Diehl (Board Member):

5 I'd have to agree.... I don't have anything else to add but I didn't see any what I would call scientific
6 based evidence ... to make any changes.

7 Susan Frey:

8 And I would add as my comment that ... I can speak loud enough – you don't have to rush it
9 (microphones moved). And, from my point of view, I saw nothing that address the accepted safe use of
10 marijuana and any safeguards that would lead or maintain the regulation for good public safety. And I
11 also did not see anything in that information that would allow us to determine an appropriate
12 classification for marijuana. When controlled substances are classified, it's classified on the 8 criteria
13 that Scott presented in our legal brief to the court. And I think that that was not addressed
14 appropriately to the court and not all of those counts were presented and also certainly not here at our
15 hearing. So I would say that, again, I would back the comments that we need science-based evidence.
16 That there are acceptable uses and that those uses are within the realm of safety for the public.

17 Ann Diehl: I would just like to add (imperceptibly quiet voice).

18 Scott Galenbeck: Would you like me to ... draft a finding that is responsive to the remand and submit it
19 to the board for consideration and review?

20 Susan Frey: I would certainly entertain a motion for that. Moved. Carried. Adjourned to closed session.

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22 ONLINE LINK:

23 <http://openup.iowa.gov/board/Board+of+Pharmacy/97/>

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