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Marijuana rescheduling case heads back to court

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DES MOINES - The ACLU Foundation of Iowa [ACLU], announces that it has filed an petition with the Polk County Iowa District Court seeking to overturn the most recent decision of the Iowa Board of Pharmacy not to recommend removal of marijuana from Schedule I of the Iowa Controlled Substances Act.

Schedule I is reserved for substances and drugs that have no recognized medical use in the United States. The ACLU is arguing that marijuana no longer meets the criteria for listing in schedule I because 13 states representing 1/4 of the United States Population, now allow marijuana to be used for medical purposes under the supervision of a physician.

Substances listed in schedule I are subject to the strictest regulation. Paradoxically, drugs like cocaine and opiates are subject to less restrictions on their use because they are listed in schedule II. Because marijuana is listed in schedule I, Iowa physicians are unlikely advise chronically or terminally ill patients concerning its use in treatment of nausea, chronic spasms, loss of appetite and other severe symptoms, and opponents of medical marijuana are free to argue that it has no medicinal value.

The Iowa Board of Pharmacy has resisted demands that it recommend rescheduling of marijuana to the Iowa Legislature, as it is required to do when a drug or substance no longer meets the criteria for listing in schedule I. On April 21st, 2009, in response to a lawsuit brought by the ACLU on behalf of this state's last two remaining medical marijuana patients, Iowa District Court Judge, Joel D. Novak, ordered the Board of Pharmacy to reconsider its decision, stating that the pharmacy board had based its decision “upon an erroneous interpretation of the law.”

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The Board of Pharmacy issued a new decision on July 21st, 2009, continuing its refusal to recommend the rescheduling of marijuana. The latest legal action undertaken by the ACLU asks Judge Novak to overturn the Board's decision on grounds that the Board ignored the instructions in the court's previous order and because it can be determined "as a matter of law" that marijuana has acceptance for medical use in treatment in the United States. Such a finding would require the Board to recommend that marijuana be listed in a different schedule.

The ACLU's clients are George McMahon and Barbara Douglass, who are two of the last 3 or 4 patients in the United States still receiving marijuana grown by the federal government for medical treatment under the FDA's Investigational New Drug (IND) Compassionate Access Program. In 1992 President George H.W. Bush closed the program to new applicants when thousands of AIDS victims began seeking admission. McMahon and Douglass support the rescheduling of marijuana as a logical step toward authorizing its medical use, and their continued treatment.

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