

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GEORGE McMAHON, BRYAN
SCOTT and BARBARA DOUGLASS

Petitioners,

CARL OLSEN,

Intervenor

vs.

IOWA BOARD OF PHARMACY
(00AG27588)

Respondent.

CASE NO. CV 7415

RESISTANCE TO "MOTION
TO EXPAND RULING"

Pursuant to Iowa R. of Civil P. 1.431(4), Respondent Board of Pharmacy (hereinafter, "Board") files this resistance to a "Motion To Expand Ruling" filed by petitioners George McMahon and Barbara Douglass. The Board's resistance is based upon the following:

1. On October 30, 2009, this Court issued a Ruling on Petition for Judicial Review of Agency Action which denied Petitioner's Petition for Further Judicial Review of Agency Action. Petitioners now ask that the Ruling be expanded.
2. The Court's October 30, 2009 Ruling was preceded by an order of remand to the Board (Ruling on Petition for Judicial Review; April 21, 2009) which directed the Board to make more complete findings regarding whether evidence presented to the Board was sufficient to allow the Board to make findings regarding whether marijuana has an accepted medical use in the United States.

3. In compliance with the order of remand, the Board adopted a Supplemental Order on July 21, 2009.
4. The Board's Supplemental Order found: "Olsen did not present any evidence upon which this Board can make any finding relevant to (1) the statutory criteria found in Iowa Code § 124.201 (2009) or (2) whether marijuana has accepted medical use in treatment in the United States and does not lack accepted safety for use in treatment under medical supervision (See Iowa Code § 124.203 (2009)). (Supplemental Order, p. 8)
5. The Board concluded that there was "no evidence in the administrative record to support a finding by the Board that marijuana does not have a high potential for abuse *or* that marijuana has an accepted medical use in treatment in the United States *or* that marijuana does not lack accepted safety for use in treatment under medical supervision. The record is simply too sparse for the Board to make any finding relating to the statutory criteria for decision making." (Supplemental Order, p. 12)
6. Petitioners current motion asks this Court to make a finding that the Board could not make. Specifically, Petitioners ask this court to find that marijuana has an accepted medical use in the United States.
7. Petitioners' request is founded upon a reading of the Iowa Code that – in essence – adds the words "*somewhere*" to the text of Iowa Code § 124.203 (2009).
Petitioners argue that because marijuana has an accepted medical use

somewhere in the United States, the Board must recommend to the legislature that marijuana be removed from controlled substance Schedule I.

8. Petitioners cite no authority in support of their argument.

9. The plain language of the statute guides its application. Searching for meaning beyond the express terms of a statute is not permitted. *State v. Knowles*, 602 N.W.2d 800, 801 (Iowa 1999); *Estate of Frink v. Regions Bank*, 725 N.W.2d 658, 2006 WL 3018160 (Iowa App.) (courts must look to what the legislature said, rather than what it might have said or should have said). Thus, supplementing the statutory language with additional words – for the purpose of reaching the result Petitioners seek – is inappropriate.

10. The Board concluded that it did not have sufficient evidence to determine whether marijuana has an accepted medical use in the United States – a country composed of fifty states, not thirteen. Petitioners make no argument and cite to no authority that establishes that the laws of thirteen states dictate what is "accepted medical use" in the United States as a whole.

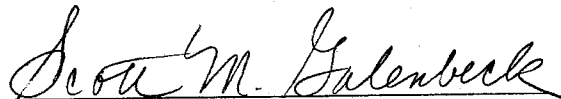
11. Petitioners' calculation overlooks the fact that thirty-seven states have *not* legalized medical marijuana use. Nor do Petitioners address the fact that the federal Controlled Substances Act bars marijuana possession, even if used for medical purposes. *See* 21 U.S.C. § 801 et seq.

12. There is no factual basis or legal basis for declaring that marijuana has an accepted medical use in the United States. Board's Supplemental Order is not incorrect as a matter of law.

WHEREFORE Respondent Iowa Board of Pharmacy requests that this Court deny
Petitioners' Motion to Expand Ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties in the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa, on the 23rd day

of Nov., 2009.

