

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GEORGE McMAHON, BRYAN)	
SCOTT and BARBARA DOUGLASS)	CASE NO. CV 7415
)	
Petitioners,)	
)	
CARL OLSEN,)	RESISTANCE TO "MOTION
)	FOR REVIEW"
Intervenor)	
vs.)	and
)	
IOWA BOARD OF PHARMACY)	MOTION TO STRIKE
(00AG27588))	
)	
Respondent.)	

Pursuant to Iowa R. of Civil P. 1.431(4), Respondent Board of Pharmacy (hereinafter, "Board") files this resistance to a "Motion for Review of July 21, 2009 Board of Pharmacy Supplemental Order" filed by intervenor, Carl Olsen, and moves to strike the same. The Board's resistance and motion are based upon the following:

1. On April 21, 2009 this court issued a Ruling on Petition for Judicial Review which remanded, to the Board, the single issue of whether Olsen had presented enough evidence to the Board to support a finding that marijuana has an accepted medical use in the United States and does not lack accepted safety for use in treatment under medical supervision.
2. On July 21, 2009, the Board – in full compliance with this court's order – adopted a Supplemental Order which determined, among other things, that Olsen's petition to the Board was not supported by evidence which would allow

the Board to make a finding that marijuana has accepted medical use in treatment in the United States and does not lack accepted safety for use in treatment under medical supervision.

3. Olsen has now filed a Motion for Review, along with exhibits 1 through 7 which contain copies of a wide variety of documents; e-mails, testimonials, letters, transcripts and court rulings. None of these documents are part of any administrative record of the Board except Exhibit 1, which is the July 21, 2009 Supplemental Order of the Board.

4. It is apparent from the seven exhibits offered by Olsen that he wishes to commence an original action in the District Court; an original action which is essentially an invitation to the District Court to determine the efficacy of marijuana for medical use. Original actions cannot be combined with judicial review proceedings, which are appellate in nature. *Keokuk County v. H.B.*, 593 N.W.2d 118, 125 (Iowa 1999) ("When the district court exercises appellate jurisdiction, it has no jurisdiction over other claims for relief cognizable as original actions"). Thus, this court should strike Olsen's motion because it ignores the appellate nature of judicial review proceedings.

5. Although the first sentence of Olsen's motion states that he seeks judicial review of the July 21, 2009 order of the Board, Olsen has not filed a petition for judicial review in the manner required by Iowa Code § 17A.19(4). Olsen has not identified a ground upon which relief is sought. *See* Iowa Code §§ 17A.19(4)(d), 17A.19(10) (2009).


6. And, while it is clear that the Olsen disagrees with Board's July 21, 2009 order, he cannot in good faith dispute the Board's finding that he created an inadequate record – *for he now wishes to cure the deficiencies of the record he made in June 24, 2008 by introducing his exhibits*. He thus concedes the obvious; that the June 24, 2008 record was inadequate to support findings regarding the medical use of marijuana.

7. Olsen's failure to comply with Iowa Code provisions, his attempt to combine an original action with judicial review proceedings, and his profusion of exhibits leave this Court no choice but to strike his motion. Any attempt by this Court to refine Olsen's pleadings – or, perhaps, divine his intent – would improperly render the Court an advocate rather than an impartial judicial body. *See Zortman v. Linder, et al.*, 756 N.W.2d 48 (table), 2008 WL 2752108 (Iowa App. 2008; unpublished); *Inghram v. Dairyland Mutual*, 215 N.W.2d 239, 240 (Iowa 1974).

WHEREFORE Respondent Iowa Board of Pharmacy resists, and moves to strike, Intervenor's Motion for Review.

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 13th day of August, 2009.

