

IN THE IOWA DISTRICT COURT
POLK COUNTY

Carl Olsen,)	Docket No. CV7415
Appellant/Intervenor,)	
)	STATEMENT
<i>vs.</i>)	OF PROCEEDINGS UPON
)	APPEAL TO THE
The Iowa Board of Pharmacy,)	IOWA SUPREME COURT
Appellee/Respondent.)	[<i>Supreme Court No. 09-1789</i>]

In compliance with Iowa R. App. P. 6.806, Intervenor, Carl Olsen, submits the following statement of the proceedings:

1. Between 1996 and 2009 (a period of 13 years), Marijuana [or “Cannabis” as it is defined in Iowa Code § 124.101(19)] has been accepted for medical use by 13 states in the United States.¹
2. Marijuana is listed in “schedule I” under the Iowa Uniform Controlled Substances Act, Iowa Code § 124.204(4)(m).²
3. Marijuana is listed in “schedule II” under the Iowa Uniform Controlled Substances Act, Iowa Code § 124.206(7)(a).³
4. The Respondent, the Iowa Board of Pharmacy, has not adopted any rules regarding marijuana’s use for medical purposes.⁴

¹ Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

² “except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes”

³ “when used for medicinal purposes pursuant to rules of the board of pharmacy examiners”

⁴ *State v. Bonjour*, 694 N.W.2d 511, 517 (Iowa 2005) (Wiggins, J., dissenting) (“[T]he board of pharmacy examiners has not enacted rules regarding the medical use of marijuana”).

5. The Iowa Board of Pharmacy has a statutory duty to review the classification of controlled substances annually. Iowa Code § 124.201.

6. Thirteen states have accepted the medical use of marijuana over the past 13 years since 1996, and the Iowa Board of Pharmacy has not reviewed the classification of marijuana during that period of 13 years.

7. Although the Iowa Board of Pharmacy is currently reviewing the classification of marijuana, that review is not an official response to the petition filed by the Intervenor, Carl Olsen, on May 12, 2008, and is not a part of the record in these proceedings.

8. The criteria for schedule I, Iowa Code 124.203, are: “(1) Has high potential for abuse; and (2) Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.”⁵

9. The criteria for schedule II, Iowa Code 124.205, are: “(1) The substance has high potential for abuse; (2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and (3) Abuse of the substance may lead to severe psychic or physical dependence.”⁶

⁵ “If the board finds that any substance included in schedule I does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.”

⁶ “If the board finds that any substance included in schedule II does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.”

10. Respondent, Iowa Board of Pharmacy, ruled that “before recommending to the Iowa Legislature that marijuana be moved from schedule I to schedule II, the Board would also need to make a finding that marijuana lacks a high potential for abuse.” Board’s “Order”, October 7, 2008, at page 2.

11. The district court expressly found that: “[T]he Board's statement that it ‘would also need to make a finding that marijuana lacks a high potential for abuse’ before it could recommend to the legislature that marijuana be moved from Schedule I to Schedule II is based upon an erroneous interpretation of law.” Court’s “Ruling on Petition for Judicial Review”, April 21, 2009, at page 3. The foregoing ruling became the law of the case.

12. In response to the district court ruling of April 21, 2009, the Respondent impugned the character of the Intervenor⁷ and interpreted the statutory language accepted medical use “in the United States” to mean accepted medical use in all 50 states. Board’s “Supplemental Order”, July 21, 2009, at pages 7-8.

13. Iowa’s Uniform Controlled Substances Act defines “‘State,’ when applied to a part of the United States, includes any state, district,

⁷ The misclassification of marijuana damages the Intervenor's reputation and is what gives the Intervenor standing to complain of the misclassification. The Respondent's attack on the Intervenor's character is neither scientific nor professional and is not relevant to the issue presented.

commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.” Iowa Code § 124.101(28).

14. The Respondent does not have the authority to determine what the law should be in any other state, and is bound by the Full Faith and Credit Clause of the United States Constitution to accept the laws of other states as meaning what they say. U.S. Constitution, Article IV, Section 1.

15. The Respondent’s interpretation of the statutory language accepted medical use “in the United States” is accepted medical use in all 50 states, which is the same thing as accepted medical use in Iowa since Iowa is one of those 50 states.

16. In its ruling of October 30, 2009, the district court accepted the Respondent’s Supplemental Order of July 21, 2009. Court’s “Ruling on Petition for Further Judicial Review of Agency Action”, October 30, 2009.

17. In its ruling of November 25, 2009, the district court ruled, “it does not believe that it can determine as a matter of law that marijuana does have ‘accepted medical use in treatment in the United States’ based upon the medical use of marijuana in thirteen states.” Court’s “Ruling on Motion to Expand Ruling”, November 25, 2009.

Dated December 14th, 2009

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that on December 14th, 2009, I served this document by mailing a copy to all other parties in this matter at their respective addresses below:

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I further certify that on December 14th, 2009, I filed this document by hand delivering it to the Clerk of the District Court for Polk County, 400 Mulberry Street, Des Moines, Iowa 50309.

I further certify that on December 14th, 2009, I filed this document by hand delivering it to the Clerk of the Supreme Court, Iowa Judicial Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Carl Olsen