

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,
Petitioner,

vs.

IOWA BOARD OF PHARMACY
(99AG27588),
Respondent.

CASE NO. CV 8156

**RULING ON RESPONDENT'S MOTION
TO DISMISS**

This matter came before the court on June 11, 2010, for hearing on respondent's motion to dismiss. Present were Assistant Attorney General Scott Galenbeck for respondent and petitioner (who appeared pro se) as well as Mr. George McMahon who seeks to intervene in this matter. Having heard the arguments of the parties, having reviewed the court file, and being otherwise fully advised in the premises, the court now enters its ruling.

STATEMENT OF MATERIAL FACTS

On February 17, 2010, respondent Iowa Board of Pharmacy (Board) issued a resolution to the state legislature, which recommended marijuana be reclassified from a Schedule I substance to a Schedule II substance. This reclassification, if adopted by the state legislature, would allow marijuana to be regulated and used for medicinal purposes.

The Board utilized several hearings to gather information on marijuana and its possible medical benefits. A total of four hearings were held between August and November of 2009 in Des Moines, Mason City, Iowa City and Council Bluffs. At these hearings, the Board listened to

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testimony from medical practitioners, law enforcement personnel and concerned citizens. The hearings were open to the public and anyone could attend and issue either a written statement or give oral testimony. The Board then used the information gathered at these hearings to inform their discussion of the topic during a Board meeting on February 17, 2010. It was this discussion which ultimately resulted in the Board recommending the state legislature reschedule marijuana from a Schedule I substance to a Schedule II substance. The Board did not supply any formal findings of fact or law in their recommendation to the state legislature.

Petitioner filed a Petition for Writ of Mandamus in an attempt to compel the Board to issue a written statement of their findings of fact and law. The Board has filed a motion to dismiss for failure to state a claim on which relief can be granted. Iowa R. Civil P. 1.421(f) and 1.431.

DISCUSSION

Petitioner asserts this matter was a contested case and the Board is bound by law to issue findings of fact and law pursuant to the hearings and meeting they held to discuss the rescheduling of marijuana. Iowa Code § 17A.16 (2009). This section of the Iowa Code does require a statement of the Board's findings of fact and law. However, the statute only applies to "contested cases."

Under the Administrative Procedure Act, a "contested case" is defined as a proceeding "in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing," and a party whose rights are being determined based upon individualized particular facts and circumstances is entitled to an adversarial hearing with the presentation of evidence and arguments and the

opportunity to cross-examine witnesses and introduce rebuttal evidence; on the other hand, “other agency action” is a residual category, which includes agency actions that do not fall within the rulemaking or contested case categories. I.C.A. § 17A.2(5), *Strickland v. Iowa Bd. Of Med.*, 764 N.W.2d 559 (Iowa App. 2009).

This definition of a contested case essentially means, in order for the Board to be required by law to issue findings of fact and law, the proceeding in question must be a contested case. In order for a proceeding before the Board to be considered a contested case under Iowa law, a party’s rights must be the issue in question and evidentiary hearings must have been conducted. *Strickland*, 764 N.W.2d 559. Thus, in order for the Board to be required by law to issue findings of fact and law, a party’s rights must be at risk and the four hearings and one meeting that were held regarding the subject of medicinal marijuana must be considered evidentiary hearings.

Under Iowa law, individuals whose rights are being determined by a state governmental agency are entitled to an “adversarial hearing with the presentation of evidence, arguments and the opportunity to cross-examine witnesses.” *Id.* This did not happen in the instant case. It seems the Board held a series of information-gathering town hall meetings which the general public was welcome to attend. There were no opening and closing arguments and there was no opportunity to cross-examine witnesses.

The Board’s February 17, 2010 meeting does not qualify as an evidentiary hearing. The Board simply discussed the information gathered at the previous meetings. No witnesses were called and no opening and closing statements by aggrieved parties were given.

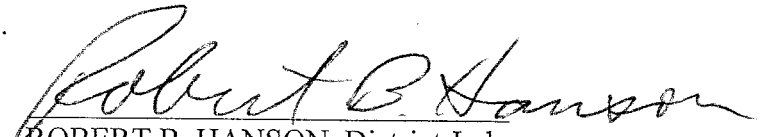
It is this Court’s determination that no evidentiary hearings were held on the subject of medicinal marijuana. Quite simply, if no adversarial evidentiary hearings were held, then this

matter cannot be considered a contested case under Iowa law. The Board's activities concerning the subject of medicinal marijuana are properly classified as "other agency action."

Consequently, petitioner's only recourse is to seek judicial review. Iowa Code § 17A.19 (2009).

IT IS THEREFORE ORDERED that respondent's motion to dismiss is **GRANTED**. All other pending motions are **DENIED** as moot.

Dated this 23rd day of August, 2010.


ROBERT B. HANSON, District Judge
Fifth Judicial District of Iowa

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