

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,)	
Petitioner,)	
)	No. CV 8156
and)	
)	
GEORGE McMAHON,)	
Intervenor,)	
)	
vs.)	
)	RESISTANCE TO RESPONDENT'S
IOWA BOARD OF PHARMACY,)	MOTION TO DISMISS
Respondent.)	

Petitioner Carl Olsen (hereinafter, “Olsen”) resists the “Motion to Dismiss” filed by the Respondent Iowa Board of Pharmacy (hereinafter “Board”) because the Board has not made a final ruling that complies with the statutory requirements of Iowa Code § 124.201 and Iowa Code § 17.16. The Board refuses to explain the rationale for its February 17, 2010 recommendation to move marijuana from Iowa Code § 124.204 (Schedule I) to Iowa Code § 124.206 (Schedule II).

The Board is aware of its duty to comply with the requirements of Iowa Code § 124.201 and Iowa Code § 17.16. After the hearing on February 17, Olsen asked the Executive Director of the Board if a written explanation would be forthcoming and the Executive Director assured Olsen that it would. The Executive Director of the Board sent Olsen an email on March 3, 2010, telling Olsen that the Board had not yet set a time for the release of its written explanation. When Olsen called to see if the Board had set a time to release its written explanation on April 5, the Executive Director of the Board told Olsen the Board was not going to waste any

more time and would not be releasing any written explanation for its ruling. On April 13, Olsen filed this Petition for Writ of Mandamus to compel the Board to explain the rationale for its February 17 recommendation to move marijuana from Schedule I to Schedule II of the Iowa Uniform Controlled Substances Act.

The 30 day statutory time limit for seeking judicial review should not begin until Olsen was notified that no further action was going to be taken by the Board, which would be April 5, since Olsen was waiting for the Board to complete its written explanation and was led to believe one would be forthcoming. The Board cannot simply trick Olsen into believing the final ruling was not complete and then use that deception to deprive Olsen of judicial review.

This Petition for Writ of Mandamus was filed on April 13 because it would be impossible to seek judicial review of a final ruling without the written explanation for the ruling. At the February 17 hearing Olsen asked for a formal ruling and a written explanation and was told it would be forthcoming. The Board cannot simply arbitrarily decide what classification a controlled substance should be in without giving an explanation for its decision.

The Board argues that this is not a contested case because no evidentiary hearings were held, but four evidentiary hearings were held in 2009 and the Board spent three hours on February 17 discussing the evidence it received at those four hearing before making its recommendation to move marijuana from its current classification to a different classification. Olsen has provided links to the audio recordings of the February 17 hearing as well as the transcripts from all 4

evidentiary hearings held in 2009. Hundreds of scientific studies were submitted, the majority of which can be found at: <http://science.iowamedicalmarijuana.org/>

The leading case cited by the Board in opposition to Olsen's Petition, *ABC TV Rental Systems v. Bair*, 1986 WL 217577 (Polk County District Court) is unlike this one for several reasons.

In *ABC*, the court observed that treating the plaintiff's petition for writ of mandamus as a petition for judicial review would not resolve the failure of the plaintiff in that case to file for review within 30 days as required by the Iowa Administrative Procedures Act. In this case, Olsen filed for Writ of Mandamus as soon as he was told on April 5 that no further action would be taken by the Board. Olsen was told on March 3 that further action would be taken by the Board and Olsen accepted that written communication from the Board in good faith.

Another difference in *ABC* is that ABC's petition for writ of mandamus actually was a petition for judicial review, unlike this case where judicial review would be meaningless without a rationale for the Board's recommendation. Olsen's Petition for Writ of Mandamus should be granted because it is not possible to have any meaningful review from an agency decision unsupported by any rationale for the decision.

WHEREFORE, Olsen petitions the Court to deny the Board's Motion to Dismiss and order the Board to explain its ruling on February 17, 2010, with an analysis of the evidence presented to it during the four public hearings held in 2009 and how it applied the statutory criteria to that evidence as required by law.

Dated this 7th day of April, 2010.

Respectfully submitted,

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Exhibits: <http://www.iowamedicalmarijuana.org/pharmacyhearings.aspx>

1. Audio recordings of February 17, 2010, Iowa Board of Pharmacy hearing:
http://www.iowamedicalmarijuana.org/mp3s/pharmacy_board_20100217_1.mp3
http://www.iowamedicalmarijuana.org/mp3s/pharmacy_board_20100217_2.mp3
http://www.iowamedicalmarijuana.org/mp3s/pharmacy_board_20100217_3.mp3
2. Transcripts of August, September, October, November Pharmacy Board hearings:
Des Moines – August 19, 2009
http://www.iowamedicalmarijuana.org/pdfs/dm_1_10.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_11_20.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_21_30.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_31_40.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_41_50.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_51_60.pdf
http://www.iowamedicalmarijuana.org/pdfs/dm_61_63.pdf
Mason City – September 2, 2009
http://www.iowamedicalmarijuana.org/pdfs/mc_1_10.pdf
http://www.iowamedicalmarijuana.org/pdfs/mc_11_20.pdf
http://www.iowamedicalmarijuana.org/pdfs/mc_21_30.pdf
http://www.iowamedicalmarijuana.org/pdfs/mc_31_38.pdf
Iowa City – October 7, 2009
http://www.iowamedicalmarijuana.org/pdfs/ic_1_10.pdf
http://www.iowamedicalmarijuana.org/pdfs/ic_11_20.pdf
http://www.iowamedicalmarijuana.org/pdfs/ic_21_30.pdf
http://www.iowamedicalmarijuana.org/pdfs/ic_31_40.pdf
http://www.iowamedicalmarijuana.org/pdfs/ic_41_43.pdf
Council Bluffs – November 4, 2009
http://www.iowamedicalmarijuana.org/pdfs/cb_1_10.pdf
http://www.iowamedicalmarijuana.org/pdfs/cb_11_20.pdf
http://www.iowamedicalmarijuana.org/pdfs/cb_21_30.pdf
http://www.iowamedicalmarijuana.org/pdfs/cb_31_40.pdf
http://www.iowamedicalmarijuana.org/pdfs/cb_41_50.pdf
http://www.iowamedicalmarijuana.org/pdfs/cb_51_54.pdf

3. <http://science.iowamedicalmarijuana.org/>

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the forgoing Resistance to Respondent's Motion to Dismiss was served upon the attorney for the Respondent and the Intervenor by First Class mail on the 7th day of May, 2010.

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