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For Medical Marijuana, a New Foe

AUTHOR: GAVIN ARONSEN
December 23rd, 2010 · 3 Comments

In his ongoing battle to legalize medical marijuana in Iowa, Des Moines activist Carl Olsen has encountered a new foe: the Governor's Office of Drug Control Policy (ODCP). For the new legislative session next month, the office plans to propose that the Statehouse remove a dormant section of the Iowa Code granting marijuana conditional medical scheduling "pursuant to the rules" of the state's Board of Pharmacy. That would eliminate what had been one of Olsen's key legal challenges in his dogged efforts to get things to where they are today.

Late last month, the pharmacy board also said it would tell the Legislature to remove that language of the Iowa Code, but then to place pot in the medically accessible Schedule II. "All I know is I just won today," Olsen told the *Des Moines Register* after the board's unanimous decision. "But how much did I win? I don't know." If lawmakers go the board's suggested route instead of the ODCP's, Olsen believes it will provide him the foundation to challenge marijuana's prohibitive federal classification – something he says states that already have medical marijuana programs can't do because of how they've skirted federal law.

ODCP Associate Director Dale Woolery says that despite his office's opposition to medical marijuana, "We want to keep an open mind as to what the science might show." In a series of four public hearings held last fall, a slew of scientific evidence of marijuana's medicinal properties was presented to the pharmacy board, which led to its initial decision to support medical pot this February. Still, Woolery holds firm, saying, "Science doesn't really indicate smoked or raw marijuana is a medicine so much as some of the compounds within it." He suggests that these compounds be isolated for medical use, following the example of the (questionably effective) synthetic THC drug Marinol.

Olsen is not pleased with the ODCP's posturing. In an e-mail to Woolery obtained by the *Progressive*, he questioned the legality of its involvement. "Your office did not present any evidence [at the hearings] and your office has no statutory authority to consider scheduling," Olsen wrote. "Please think before your office goes sticking its nose into business it has no authority to interfere with." But Woolery says that while the ODCP

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didn't attend last year's hearings because it "thought that being there might not be useful," it did review transcripts of each one. Now, he says, "I guess it's a matter of making sure all other opinions are out there."

Regardless, a schedule change favorable to Olsen may be hard to come by. Pharmacy board chairman Vernon Benjamin calls the issue "political football." Legislators, he assumes, will "dodge and weave and attempt to get away from this issue" during the new session. The *Progressive* reported in September that soon-to-be House Minority Leader Kevin McCarthy indicated that there wouldn't be much interest in the topic next year – this after his empty promise earlier this year to establish a summer study on how to set up a medical marijuana program.

But Olsen remains optimistic. He says politicians opposed to medical marijuana, including Republican Governor-elect Terry Branstad, might be open to the board's proposal to reclassify the drug. That would acknowledge pot's medical utility but wouldn't create a system of production and distribution. Says Benjamin, echoing the views of several lawmakers, "Whatever plan going forward has to be right. We're not going to screw this up the way California has." Olsen says he's now waiting to see if the Legislature chooses to act on the board's rescheduling recommendation before making his next move. If the board is ignored, that next move may be a lawsuit against the state.

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3 RESPONSES SO FAR ↓

Carl Olsen // Dec 23, 2010 at 1:28 pm

1

I have a correction. Removing the language about rulemaking does not eliminate a key legal argument in a negative sense. It's true, I used that meaningless language as leverage, but it is really meaningless unless someone can tell us what it means. The Iowa Board of Pharmacy says that language is meaningless and wants to remove it. The Governor's Office of Drug Control Policy agrees on that point. So, that is the one thing we all agree on. That language about rulemaking is meaningless. My legal challenge does not depend on that language. Part of my legal challenge was the goal of getting that language removed from the statute because it is meaningless. Marijuana cannot be in two schedules at the same time, one that says it has medical use and the other that says it does not have medical use. The Iowa Legislature must pick one. The Iowa Board of Pharmacy, which is authorized by law to make the decision based on very specific criteria in the Iowa Code, says marijuana should be in Schedule II. The Office of Drug Control Policy, representing cops and substance abuse treatment workers, says it should be Schedule I. If I want a medical opinion, I know I'm not going to go to a cop or a substance abuse treatment worker for an expert opinion on medical care and treatment. So, this is really a test of the Iowa Legislature to see how many of them are intelligent

more

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enough to know the difference.

garonsen // Dec 23, 2010 at 5:19 pm

2

Thanks for the comment, I did end up making a slight edit since the issue's still on its way to the printer. The point I'm making's that the language of the Iowa Code has been a key part of the process. From the ODCP's standpoint it's given pot a degree of medical legitimacy that it's not intended to have, and the ODCP wants to end the immediate discussion of reinforcing that legitimacy.

Carl Olsen // Dec 23, 2010 at 7:22 pm

3

I still don't think the ODCP is qualified to say anything about this matter. They had the opportunity to present evidence and didn't. That disqualifies them from saying they have evidence now. How convenient. Just skip the official hearings and then say you had evidence that would have resulted in a different conclusion. They knew they would lose, so they just stayed away. What we have here is a total disrespect for the law, by law enforcement. So, if you disrespect the marijuana laws, don't worry about it, because you're in good company.

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Wow. Look out Bukowski and smile from over there, Brautigan.