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Bumps in the Road to Medical Marijuana: The Current Iowa Stalemate Doesn't Change the Endgame -- Federal Legalization

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WRITTEN BY JEFF IGNATIUS
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On February 17, the Iowa Board of Pharmacy voted unanimously to support a motion recommending "that the legislature reclassify marijuana from Schedule I of the Iowa Controlled Substance Act ... to Schedule II ... with the further recommendation that the legislature convene a task force or study committee ... for the purpose of making recommendations back to the legislature regarding the administration of a medical-marijuana program."

That simple, unequivocal statement followed four public hearings in summer and fall 2009, and appeared to be a major victory for medical-marijuana advocates.

But that win looks largely symbolic today, as Democratic legislative leaders last month balked at forming a study group, and the Board of Pharmacy reiterated its desire for legislative guidance.

Yet the Board of Pharmacy's recommendation remains a clear first step toward allowing medical use of marijuana in Iowa. According to the Iowa Controlled Substances Act, a Schedule I drug has "no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision." A Schedule II drug has "currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions."

So a request to reschedule marijuana is an acknowledgment by the Board of Pharmacy that marijuana has an "accepted medical use." But who will make marijuana available for medicinal use in Iowa?

At this point, the answer from the Board of Pharmacy and the legislature could be drawn from that old *Family Circus* gag: "Not Me!"

Carl Olsen, the director of Iowans for Medical Marijuana, continues to litigate the issue, most recently asking the courts to compel the Iowa Board of Pharmacy to explain its recommendation to the legislature.

"I think the Board of Pharmacy made a huge mistake by not publishing the rationale for its conclusion," he said last week. "They sent the legislature a two-sentence conclusion that without an explanation doesn't make any sense."





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Still, Olsen said he's not discouraged by recent developments, casting the political back-and-forth as part of a larger process. "It's difficult to undo all the reefer madness and stuff," he said. "It has to occur in small, tiny steps. ... What we hope to see happen is that we continue to make progress, and that it doesn't stall out at the level it's at. It's not surprising that it's got bumps along the way."

And the reality is that Olsen's larger interest isn't merely medical marijuana in Iowa. His ultimate aim is to get marijuana removed from the federal list of Schedule I drugs -- in other words, to make medical marijuana legal under federal law.

"It may not look like it to some people, but to me it looks like a huge change going on," Olsen said.

State Stalemate

The assumption after the Board of Pharmacy's February ruling was that the legislature would weigh in on the issue. On May 1, the *Des Moines Register's* Iowa Politics Insider blog noted that House Majority Leader Kevin McCarthy (D-Des Moines) "said he and other legislative leaders still intend to set up a study committee on the issue this summer, and they hope to reach a bipartisan consensus. But legislators might not need to change the law, he said. Instead, they might pass a resolution stating their stance on the issue."

McCarthy noted that state law already allows for medicinal use of marijuana -- if the Board of Pharmacy allows it. The Iowa Controlled Substances Act includes marijuana on Schedule I, "except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes."

But on June 14, McCarthy backtracked about a study committee. In the Iowa Politics Insider blog, McCarthy was quoted as saying: "There's no need for an interim committee, because it's already law."

McCarthy left out one important element: It's "law" only to the extent that the Board of Pharmacy acts on it.

In an e-mail to Senate President Jack Kibbie (D-Emmetsburg), Iowa Board of Pharmacy Executive Director Lloyd Jessen pleaded for legislative action: "The suggestion that the Board can implement a medical marijuana program entirely on its own is simply incorrect. The Board does not currently have the jurisdiction or legal authority to address all the necessary issues by administrative rule. Those issues include complex matters such as the growing and distribution of marijuana, the physician's role in making it available to Iowa patients, qualifying medical conditions, program funding, criminal sanctions for violations of the program, legal protection for those who comply with the program, and ... myriad ... other related matters. All of these critical issues exceed the Board's statutory jurisdiction."

Jessen elaborated on the board's role in a mid-June interview with Iowa Public Radio: "The Board of Pharmacy is limited in what it can do. It was created to regulate the practice of pharmacy. And this goes far beyond regulating the practice of pharmacy,

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Chris, the question posed by Jeff was specific to "medical"...

because medical marijuana probably will not be distributed by pharmacy. It will be either grown by patients, or it will be provided by vendors, or it would be provided by the state." (Jessen did not respond last week to two requests for an interview for this article.)

Fundamentally, Jessen is correct. The mission of the board is described in the Iowa Administrative Code: "The board of pharmacy promotes, preserves, and protects the public health, safety, and welfare by fostering the provision of pharmaceutical care to all Iowans through the effective regulation of the practice of pharmacy, the operation of pharmacies, the appropriate utilization of pharmacy technicians, the distribution of prescription drugs and devices, and the education and training of pharmacists."

Furthermore, Jessen argues, the law allowing for Board of Pharmacy-regulated use of medical marijuana is anachronistic. He told Iowa Public Radio: "That law is from 1978, and the circumstances that existed when that old law was in place are completely different today. Back in 1978, the federal government was permitting what they called investigational use of medical marijuana, and they actually supplied the medical marijuana. ... The federal government discontinued that program long ago. And federally, medical marijuana is not legal. ... The Obama administration and the U.S. attorney general have given some guidance saying that states that now have medical-marijuana laws won't be disturbed. So conditions have changed, and the issues that are involved here are many more than just a drug- or pharmacy-related issue."

He summarized that creating a medical-marijuana program in Iowa "would involve a lot more than a policy. The board believes that it requires a new law or some new legislation"

The Board of Pharmacy's reluctance to tackle the issue of creating and implementing a medical-marijuana program in Iowa is hardly a surprise; from the outset, the board has been a hesitant player in this debate.

The Board of Pharmacy had previously rejected the requests of Olsen and others to change marijuana's controlled-substance classification, and undertook its study only after Polk County District Judge Joel D. Novak ordered the board to justify its decision. That led to last year's hearings and consequently the board's unanimous recommendation.

And it's also not a surprise that the Democratic leadership has decided to avoid directly dealing with the issue of medical marijuana. Although a February poll by the *Des Moines Register* found 64-percent public support in Iowa for medical marijuana, it seems likely that Democrats -- who control both houses of the legislature and the governor's office -- don't want to be portrayed as soft on drugs.

James Getman, director of the Iowa chapter of the National Organization for the Reform of Marijuana Laws (better known as NORML), offered a different perspective. "I'm disappointed but not surprised" by the current stalemate, he said. He added that the reason that the legislature refuses to act is the influence of the pharmaceutical industry. Drug companies, he said, "are definitely lobbying to prevent medical marijuana from moving forward." The aim is to stop "competition for the products that they sell."

The *River Cities' Reader* last week sent a survey on medical marijuana to Scott County state legislators and legislative candidates. While opinions varied, three of the four who responded appeared to agree that the legislature should give some guidance on the issue of medical marijuana -- even if the Board of Pharmacy has the legal authority to move forward on its own. (Read the full responses in the [sidebar](#).)

Only Ray Ambrose, the Republican candidate for state representative in District 86, said the legislature should defer to the Board of Pharmacy: "The legislators will politicize any action taken by the pharmacy board."

"This is a complex issue crossing both state and federal jurisdictions," wrote State Representative Cindy Winckler, a Democrat from District 86. "This is a topic with much to debate." She declined to state whether she favors or opposes medical marijuana in Iowa, saying that "much more research is necessary."

State Senator Shawn Hamerlinck, a Republican representing District 42, said he is opposed to the medical use of marijuana in Iowa.

He said he believes that Iowa law gives the Board of Pharmacy the power to regulate medical marijuana: "According to current Iowa Code and rules adopted by the Board, it appears they have the authority."

He stressed, however, that lawmakers should take up the issue: "This type of change is something that should be debated by the legislature. Politicians should not hide from the issue by passing responsibility onto a board which is reluctant to fully take on the issue."

Mark J. Riley, the Republican nominee for state-Senate District 43, said the Board of Pharmacy should not act alone: "I believe the role of the Iowa legislature is to decide whether the use of marijuana should be legal or not," he wrote.

In saying that he is opposed to allowing medical marijuana in Iowa, he wrote: "The California law has proven disastrous and is an underhanded attempt to legalize use through the charade of medical purposes. This also has the unintended consequence of corrupting state institutions such as state pharmaceutical boards. These institutions are charged with regulating and keeping safe our system of dispensing pharmaceuticals to Iowans. To task them with recreation-drug dispensing under the guise of medical use is

corrupting."

He also said that the Board of Pharmacy has neither the resources nor the sanction to regulate medical marijuana: "They do not have the capacity. They do not have the regulatory authority or statutory authority. Would we ask them to regulate Jack Daniel's or Black Velvet use for medical purposes?"

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