

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,
Petitioner,

v.

IOWA BOARD OF PHARMACY,
Respondent.

No. **CVCV056841**

***PETITIONER'S REPLY TO
RESPONDENT'S REPLY TO
RESISTANCE TO MOTION TO
DISMISS***

COMES NOW Petitioner, Carl Olsen, by and through counsel, Colin Murphy, and in reply to Respondent's Reply to his Resistance to Motion to Dismiss, states:

1. Iowa Code Chapter 124, the Iowa Uniform Controlled Substances Act, is based on the Uniform Controlled Substances Act ("UCSA") drafted by the National Conference of Commissioners on Uniform State Laws.
2. The UCSA delegates the administration of the regulatory provisions to one or more state agencies. In Iowa, the Board of Pharmacy serves this role. The DEA serves this identical function at the federal level by administering the Controlled Substances Act.
3. Iowa operates a hybrid uniform act. Unlike the federal and uniform acts, Iowa does not make scheduling a formal rule making process. Instead, the Board of Pharmacy in an advisory role makes recommendations to the general assembly to revise the schedules of substances.
4. The religious exemption in Iowa for peyote, codified in section 124.204(8), is not based on a similar exemption at the federal level. The state exemption predates its federal counterpart, 21 C.F.R. § 1307.31, by at least three years. Its genesis was a ruling of the California Supreme Court in *People v. Woody*, 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 (1964), that the Free Exercise Clause

of the First Amendment prohibited the state from prosecuting a member of the Native American Church for using peyote in religious practices. The fact that Iowa recognized the exemption long before its federal counterpart demonstrates that the state need not first wait for Petitioner to obtain a religious exemption from the DEA before recognizing his equal protection claim.

5. Currently, there is an authorized process under chapter 124E allowing the secular use of cannabis extracts containing THC, but no process to apply for a religious exemption for the same extract. The Board can regulate such a process, just like the DEA at the federal level.

WHEREFORE, Petitioner Carl Olsen respectfully prays for a ruling on appeal that remands this matter to the Iowa Board of Pharmacy for further proceedings and grants any other appropriate relief under the circumstances.

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