

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>CARL OLSEN, Petitioner, vs. IOWA BOARD OF PHARMACY, Respondent.</p>	<p>CASE NO. CVCV056841 RESPONDENT’S MOTION TO DISMISS</p>
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COMES NOW Respondent, the Iowa Board of Pharmacy (“Board”), and files this pre-answer Motion to Dismiss, pursuant to Iowa Rule of Civil Procedure 1.421(1), respectfully stating as follows:

1. The Board’s purpose is to

promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized.

Iowa Code § 155A.2 (2018).

2. The Board also has the authority to make recommendations to the general assembly regarding deletions from, or revisions to the schedules of controlled substances in chapter 124 “which it deems necessary or advisable.” *Id.* § 124.201(1). The law further states:

In making a recommendation to the general assembly regarding a substance, the board shall consider the following: (a) The actual or relative potential for abuse; (b) The scientific evidence of its pharmacological effect, if known; (c) State of current scientific knowledge regarding the substance; (d) The history and current pattern of abuse; (e) The scope, duration, and significance of abuse; (f) The risk to the public health; (g) The potential of the substance to produce psychic or physiological dependence liability; and (h) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

Id.

3. Any recommendations made by the Board to the legislature are non-binding; recent recommendations made by the Board regarding marijuana have not been adopted by the legislature. *See Olsen v. Iowa Bd. of Pharmacy*, No. 16-1381, 2017 WL 3283296 (Iowa Ct. App. August 2, 2017); *Olsen v. Iowa Bd. of Pharmacy*, No. 14-2164, 2016 WL 2745845 (Iowa Ct. App. May 11, 2016). The legislature can independently amend the schedules in chapter 124 without a recommendation from the Board.

4. Neither the Iowa Code nor the Board's rules establish a right or a process for a person to petition the Board to make a specific recommendation to the general assembly.

5. This Petition should be dismissed because (1) Mr. Olsen lacks standing and (2) the Petition fails to state a claim upon which any relief may be granted.

6. First, Iowa Code section 17A.19 explicitly requires a petitioner in a judicial review proceeding to be "aggrieved or adversely affected." To meet this threshold, "[a] party must demonstrate a specific, personal, and legal interest in the subject matter of the agency decision, and show that interest has been specially and injuriously affected." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 443 (Iowa 1983).

7. In his Petition, Mr. Olsen fails to plead how he is "aggrieved or adversely affected" by the Board's refusal to make a non-binding recommendation to the legislature that a new provision be added to chapter 124 of the Iowa Code authorizing the bona fide religious use of cannabis by Rastafari.

8. Further, even if Mr. Olsen had pled that he was aggrieved or adversely affected in the Petition, his true grievance is with the current law. Any harm Petitioner has

suffered cannot be tied to the specific agency action complained of—the Board’s refusal to make a non-binding recommendation to the legislature.

9. Second, in a judicial review proceeding, a court must be able to grant the relief sought by a petitioner.

10. None of the factors described in Iowa Code section 124.201 contemplate religious considerations. As such, the legislature has not vested the Board with the authority to consider requests or make recommendations for the religious use of controlled substances. Therefore, it would be contrary to law for this Court to order the Board to do so.

11. When agency action does not constitute a contested case or a rulemaking procedure, it is considered “other agency action”, as is the case here. For other agency action, “[p]arties are only entitled to those procedures voluntarily promulgated by the agency, and to the general requirement that the agency act reasonably.” *Greenwood Manor v. Iowa Dep’t. of Pub. Health*, 641 N.W.2d 823, 834 (Iowa 2002). Because the Board has not established a voluntary procedure to hear requests of this nature, there are no further proceedings to be had even if remanded to the agency.

12. Mr. Olsen appears to be seeking either a change in law or a declaration that the current law violates his constitutional rights. The Board cannot do either of these things. As such, Petitioner cannot receive any relief through this judicial review proceeding. It is unnecessary for the Board, and outside of the Board’s expertise, to be involved in Mr. Olsen’s attempts to pursue a legislative change for a particular religious use of marijuana.

WHEREFORE, Respondent respectfully requests this Court dismiss the Petition without engaging in full briefing on this matter.

Respectfully submitted,

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