

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,
Petitioner,

v.

IOWA BOARD OF PHARMACY,
Respondent.

No. **CVCV056841**

**FIRST AMENDED PETITION FOR
JUDICIAL REVIEW OF A FINAL
AGENCY DECISION**

COMES NOW Petitioner, Carl Olsen, by and through counsel, Colin Murphy, and in support of the First Amended Petition for Judicial Review of a Final Agency Decision, pursuant to Iowa Code section 17A.19, states:

1. The agency action that is the subject of the Petition for Judicial Review is the July 16, 2018 decision to not take any action on Mr. Olsen's July 5, 2018 Petition for Scheduling Recommendation. His Petition and Memorandum in Support are attached as Exhibit 1. The agency action is attached as Exhibit 2.
2. The July 16, 2018 decision is the final agency action of the Iowa Board of Pharmacy (the "**Board**") for purposes of judicial review under Iowa Code Chapter 17A.
3. Mr. Olsen is a resident of Polk County. Venue in Polk County is proper under Iowa Code section 17A.19(2).
4. The issue raised before the Board is whether a religious exemption for the use of cannabis extracts, which contain up to three percent THC, by Rastafari should be recommended to the general assembly in light of the already existing religious exemption for the use of peyote in Iowa Code section 124.204(8) (2017) and the approved use of the same cannabis extracts for medicinal purposes under Iowa Code Chapter 124E.

5. Mr. Olsen preserved this issue for judicial review and exhausted any and all administrative remedies.
6. The Iowa Constitution and its federal counterpart recognize Mr. Olsen's fundamental rights to the free exercise of religion and equal protection.
7. The Board is vested with the authority to administer the regulatory provisions of Chapter 124 as well as the discretion to not only interpret the schedules of controlled substances, but also make recommendations to the general assembly for rescheduling.
8. The Board's decision to not take any action on Mr. Olsen's request to recommend rescheduling the religious use of cannabis extracts, which involves its legal interpretation of Iowa Code section 124.201(1), is irrational, illogical or wholly unjustifiable, an abuse of discretion under the circumstances and an action other than a rule that is inconsistent with the Board's prior practices. The Board is the proper authority to petition for a religious exemption to the schedules. Nothing in the section prohibits the Board from considering evidence concerning the use of cannabis extracts for religious purposes in recommending a revision to the schedules; the list of factors is not exclusive. Also, the Board provides no explanation as to why scientific and medical evidence is irrelevant to any religious exemption. Furthermore, Mr. Olsen does not need a federal exemption granted by the DEA for the religious use of cannabis extracts in Iowa for the same reason that consumers of cannabis extract under Iowa Chapter 124E do not need a federal exemption for medicinal use in this state. Finally, the Board has twice previously considered Mr. Olsen's petitions for rescheduling recommendations.

9. There is no compelling state interest in prohibiting the religious use of cannabis extracts now that state law allows the same for medical purposes.
10. Mr. Olsen is a member and priest of the Ethiopian Zion Coptic Church. This church is a Rastafarian church within which the use of cannabis is a sincere religious exercise.
11. Mr. Olsen is unable to freely exercise his religion under the current schedules without, at a minimum, an exemption for cannabis extracts, which are already legally permitted under Chapter 124E, similar to that provided for peyote to members of the Native American Church under Iowa Code section 124.204(8).

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.

GOURLEY REHKEMPER LINDHOLM, P.L.C.

440 Fairway, Suite 210

West Des Moines, Iowa 50266

T: (515) 226-0500

F: (515) 244-2914

E-mail: ccmurphy@grllaw.com

By: /s/ Colin Murphy AT0005567

ATTORNEY FOR PETITIONER

CARL OLSEN

Original filed.

Copy to:

Laura Steffensmeier
Assistant Attorney General
Hoover Building, Second Floor
1305 East Walnut Street
Des Moines, Iowa 50319