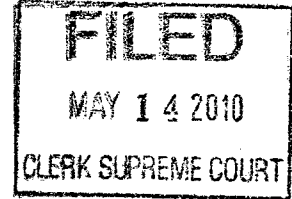


IN THE SUPREME COURT OF IOWA

No. 09-1789

Polk County No. CVCV007415

O R D E R



**GEORGE MCMAHON and
BARBARA DOUGLASS,
Petitioners-Appellants,**

and

**CARL OLSEN,
Intervenor-Appellant,**

vs.

**THE IOWA BOARD OF
PHARMACY,
Respondent-Appellee.**

This matter comes before the court, Cady, Appel, and Baker, JJ., upon petitioners' motion to vacate judgment and remand to the district court with instructions. The intervenor has filed an objection to the motion to vacate judgment and a supplement to the objection. The respondent, the Iowa Board of Pharmacy, has filed a resistance to the motion to vacate judgment. The board's resistance includes a request to dismiss this appeal as moot. The intervenor has filed a resistance to the board's request. The petitioners have filed a reply to the board's request.

The petitioners and the intervenor are appealing from the district court's ruling denying them additional judicial review of the pharmacy board's denial of their requests to recommend marijuana's reclassification as a controlled substance under Iowa Code chapter 124. On February 17, 2010, while this appeal was pending, the pharmacy board recommended that the legislature reclassify the scheduling of marijuana as a controlled substance under Iowa Code chapter 124

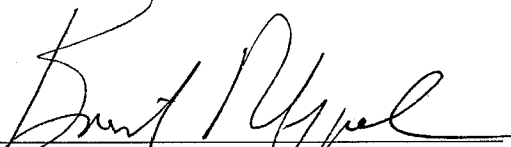
(2009). The board ultimately made the reclassification recommendation sought by the petitioners and the intervenor. This reclassification decision ended any justiciable existing controversy that an appellate decision on this case could affect. See *Grinnell College v. Osborn*, 751 N.W.2d 396, 398-399 (Iowa 2008) (need for existing controversy to justify an appeal). The appeal brought by the petitioners and the intervenor is moot.

This court agrees with the board that the proper disposition of a moot appeal before this court is dismissal. *Martin-Trigona v. Baxter*, 435 N.W.2d 744, 745-46 (Iowa 1989). Accordingly, it is ordered:

1. The petitioners' motion to vacate judgment is denied.
2. The respondent board's request to dismiss is granted. The appeal by petitioners and the intervenor is dismissed as moot.

Dated this 14th day of May, 2010.

THE SUPREME COURT OF IOWA



Brent R. Appel, Justice

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