

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

Petition by Carl Olsen
for agency action related to
Iowa Code Chapter 124E

PETITION FOR
AGENCY ACTION

The petitioner asks the department to obtain federal exemption for the medical use of cannabis as set forth in the Iowa Medical Cannabidiol Act, Iowa Code Chapter 124E. The activities covered by the act include: (1) license holders (cultivation, manufacturing and dispensing of approved medical cannabis products); (2) card holders (patients and caregivers who obtain the approved medical cannabis products); and (3) government officials who implement and administer the act.

The application for federal exemption can be found at 21 C.F.R. §1307.03.

There is an existing federal exemption for the religious use of peyote at 21 C.F.R. §1307.31. Peyote and cannabis are both federal Schedule 1 Controlled Substances. The peyote plant is listed at 21 C.F.R. §1308.11(d)(26). The cannabis plant is listed at 21 C.F.R. §1308.11(d)(23).

Tetrahydrocannabinols naturally contained in the cannabis plant are listed at 21 C.F.R. §1308.11(d)(31). Tetrahydrocannabinols are found in Schedule III prescription substances listed at 21 C.F.R. §1308.13(g)(1). See Federal Register, Vol. 64, No. 127, Friday, July 2, 1999, at page 35928. And see, Iowa Code §124.208(9)(b).

Cannabis extracts naturally contained in the cannabis plant are listed at 21 C.F.R. §1308.11(d)(58). Cannabis extracts are found in Schedule V prescription substances listed at 21 C.F.R. §1308.15(f)(1). See Federal Register, Vol. 83, No. 189, September 28, 2018, at page 48950. And see, 657 Iowa Administrative Code 10.39(4) (May 22, 2019) (amending Iowa Code §124.212 by adding a new subsection “6”).

This matter has been reviewed by the Medical Cannabidiol Board and the department staff on August 2, 2019. The Medical Cannabidiol Board approved the petitioner's request by roll call vote. The vote was unanimous. The petition and supporting documentation are attached to this petition in an appendix. The minutes from the August 2, 2019, meeting have not been published yet but will be provided on or before the next meeting of the Medical Cannabidiol Board on November 1, 2019.

BRIEF SUMMARY OF ARGUMENT

A total of 47 states have enacted legislation accepting the medical use of cannabis. All 47 of these states have thus far opted not to claim federal exemption like the existing exemption for the religious use of peyote. This makes the medical use of cannabis prohibitively expensive and difficult to regulate.

The peyote exemption proves that consistency with federal law is accomplished by federal exemption. Because federal exemption already exists for a Schedule 1 controlled substance, and because a process for obtaining federal exemption already exists, the action requested in this petition is entirely consistent with federal drug law and is the only possible means of obtaining consistency with federal drug law. Federal exemption is constitutionally available and constitutionally required.

Since the creation of the federal drug law in 1970, nothing in Schedule 1 other than cannabis has been accepted for medical use in any state, including peyote (peyote is not used for medical purposes in any state). Federal Schedule 1 is only for substances that have no accepted medical use in the United States. If not for federal exemption, placement of cannabis in federal Schedule 1 would be unconstitutional.

While this certainly raises doubts about the continued validity of the placement of cannabis in federal Schedule 1, any positive conflict between state and federal drug law is easily reconciled by exemption of state authorized medical use of cannabis.

In the absence of any express language in Iowa Code Chapter 124E stating a legislative intent to create positive conflict with federal drug law, the act must be assumed to be consistent with federal drug law and action must be taken to obtain federal acknowledgment that Iowa Code Chapter 124E is consistent with federal drug law.

TIMELINE AND DESCRIPTION OF EXHIBITS IN THE APPENDIX

December 22, 1981

Exhibit #1 – “Peyote Exemption for Native American Church,” Memorandum Opinion for the Chief Counsel, Drug Enforcement Administration. On page 6 of the memorandum it says the legislative intent was to vest discretion in the federal administrative agency to determine which substances were to be brought under control. On page 16 of the memorandum it says the exemption should not be viewed as having a religious purpose.

May 12, 2017

Iowa Code Chapter 124E created an exemption from Iowa Code Chapter 124 and Iowa Code Chapter 453B for medical use of cannabis and cannabis extracts. Iowa Code Chapter 124E, 2017 Iowa Acts Chapter 162, House File 524. See specifically Iowa Code §124E.11(4) creating the exemption.

September 15, 2017

Exhibit #2 – Petitioner’s Comments on Proposed Amendments to 641 Iowa Administrative Code 154.15 to 154.65 responding to the House Speaker’s allegations on September 10, 2017, that Iowa Code Chapter 124E authorizes federal criminal activity.

October 13, 2017

Exhibit #3 – Petitioner’s Comments on Proposed Amendments to 641 Iowa Administrative Code 154.15 to 154.65 thanking the department for precision in drafting the “Owner Certification” form.

January 20, 2019

Exhibit #4 – Petitioner’s Proposed Legislation creating a new Iowa Code §124E.12(10) stating that state authorized use of cannabis is exempt from federal scheduling.

February 1, 2019

Exhibit #5 – Petitioner’s Comments to the Medical Cannabidiol Board asking if the activity authorized by Iowa Code Chapter 124E violates federal law.

February 13, 2019

Exhibit #6 – Legislative Services Agency’s version of Petitioner’s January 20, 2019, proposed amendment creating a new Iowa Code §124E.20.

March 5, 2019

Exhibit #7 – Senate Judiciary Committee’s vote 14-1 in favor of adopting the Legislative Services Agency’s version of Petitioner’s proposed amendment.

March 6, 2019

Exhibit #8 – Petitioner’s proposed amendment as it appeared in Senate Judiciary Committee bill, Senate File 501.

June 14, 2019

Exhibit #9 – Petitioner’s Request for Medical Cannabidiol Board to support federal exemption.

July 21, 2019

Exhibit #10 – Petitioner’s Supplemental Request for Medical Cannabidiol Board to support federal exemption.

August 11, 2019

Exhibit #11 – Cedar Rapids Gazette Editorial regarding the August 2, 2019, unanimous vote of the Medical Cannabidiol Board.

September 4, 2019

Exhibit #12 – Des Moines Register Guest Editorial regarding the August 2, 2019 unanimous vote of the Medical Cannabidiol Board.

Thank you!

Signed this 21st day of September, 2019.

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cc: Lucas Nelson, MedPharm, Iowa Representative Linda Upmeyer
Senator Rich Taylor Representative Jarad Klein
Senator Brad Zaun
Senator Jack Whitver
Senator Charles Schneider

Appendix

September 21, 2019

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