

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

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Petition by Carl Olsen  
for agency action related to  
[House File 2589](#) and  
[Iowa Code Chapter 124E](#)

PETITION FOR  
AGENCY ACTION

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Petitioner, Carl Olsen, objects to [House File 2589 at page 8, §31 at lines 19-27](#) (passed by the Iowa House of Representatives on March 10, 2020, by a vote of 52-46, and by the Iowa Senate on June 3, 2020, by a vote of 32-17), which instructs the Iowa Department of Public Health (the department) to obtain guarantees from federal agencies not to withhold funding for local policies which authorize the violation of federal drug laws.

There is no formal process for requesting guarantees from federal agencies not to withhold funding for violation of federal drug laws, because it does not make any sense. Federal funding has recently been withheld for local policies which authorize the violation of federal immigration laws, [New York v. United States DOJ](#), 951 F.3d 84 (2nd Cir. 2020), February 26, 2020. Federal funding has recently been withheld for local policies which authorize the medical use of cannabis. [Federal mental health grants canceled because Maine has legal marijuana](#), Sun Journal, by Steve Collins, May 15, 2020.

Instead of implying that Iowa Code Chapter 124E authorizes the violation of federal drug laws, the department should recognize Iowa's right to determine the legitimate use of controlled substances in Iowa consistent with [21 U.S.C. §903](#). See [Gonzales v. Oregon](#), 546 U.S. 243 (2006).

To be consistent with 21 U.S.C. §903, the department should obtain a federal exemption for Iowa Code Chapter 124E. There is a formal process for obtaining a federal exemption from federal drug laws, [21 C.F.R. §1307.03](#). A federal exemption would resolve the issue with all federal agencies, not just a selected few.

There is precedent for interpreting state legislation in this manner, because [Iowa Code Chapter 124E.14](#) requires the department to license two out-of-state medical cannabidiol dispensaries from a bordering state. Similarly, [Iowa Code Chapter 124E.15](#) allows medical cannabidiol patients to register in Minnesota. The department has never implemented §14 and §15 because attorneys for the department advised the department not to implement those sections.

The same principle of statutory interpretation by the department applies here. The department should not tell the federal government that Iowa is authorizing federal crimes, which would be inconsistent with 21 U.S.C. §903. The department should reconcile state and federal law by obtaining an exemption from federal drug laws, which would be consistent with 21 U.S.C. §903. It would be completely within reason to say Iowa legislators intended to create consistency rather than inconsistency with federal drug laws and simply came up with poor language that inadequately expresses this intent. The intent, rather than the letter, should govern here.

Why create tension (“positive conflict”) between state and federal drug laws when it isn’t necessary or even desirable?

## FACTS

There is an existing federal exemption for peyote at 21 C.F.R. §1307.31. Peyote is a federal schedule 1 controlled substance. The exemption provides complete protection by all federal agencies, not just a selected few.

Cannabis is also a federal schedule 1 controlled substance, so there is precedent for the exemption of federal schedule 1 controlled substances.

This matter was presented to the Medical Cannabidiol Board on August 2, 2019. The Medical Cannabidiol Board approved obtaining an exemption for Iowa’s program from federal drug laws by roll call vote. The vote was unanimous. The Medical Cannabidiol Board presented this recommendation to the legislature on January 1, 2020, in its annual report

to the legislature, on page 7 (“seeking exemption for Iowa’s program from federal drug laws”).

## ARGUMENT

If not for the process of obtaining an exemption from federal drug laws in 21 C.F.R. §1307.03, the federal schedule 1 classification of cannabis may not even be constitutional. Federal schedule 1 controlled substances must have no accepted medical use in treatment in the United States, [21 U.S.C. §812\(b\)](#). In 1987 the federal courts determined that accepted medical use in treatment in the United States does not require accepted medical use in every state and does not require approval from the FDA (Food and Drug Administration). See [Grinspoon v. DEA](#), 828 F.2d 881 (1st Cir. 1987).

The judicial doctrine of constitutional avoidance avoids the constitutionality of leaving cannabis in schedule 1 because exemption removes the conflict between state and federal drug laws. See *Ashwander v. TVA*, 297 U.S. 288, 345-48 (Brandeis, J., concurring) (1936). See, 21 C.F.R. §1307.31. Exemption allows federal schedule 1 to exist without creating any positive conflict with state and federal drug laws and schedule 1 remains constitutional. Not every state has accepted the medical use of cannabis. Federal schedule 1 remains valid for any use of cannabis that is not authorized by state law.

State law is what determines the “legitimate medical purpose” of a federally controlled substance because Congress has not defined the phrase. See, *Gonzales v. Oregon*, 546 U.S. 243, 258 (2006). The DEA (Drug Enforcement Administration) has had difficulty defining the term “accepted medical use,” because that term is not defined anywhere in the federal drug laws. See [57 Fed. Reg. 10,499 \(Mar. 26, 1992\)](#) (“Final Order”), at 10,508; [Alliance for Cannabis Therapeutics v. DEA](#), 15 F.3d 1131, 1134 (1994); *Grinspoon v. DEA*, 828 F.2d 881 (1st Cir. 1987). Two years later, in 1996, states began accepting the medical use of cannabis, something the DEA could not have contemplated when it formulated its five-part test. The DEA’s five-part test would seem to nullify these state laws without a clear delegation from Congress of that kind of constitutional

authority over the states if not for the exemption provisions of 21 C.F.R. §1307.03. See, *Gonzales v. Oregon*, 546 U.S. 243, 258 (2006) (the administrator, “is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law”).

The constitutional questions are avoided by the exemption.

## CONCLUSION

There is no good reason to intentionally create positive conflict with federal drug law by requesting guarantees from federal agencies not to withhold funding for violation of federal drug laws. In reality, no such violation exists. Exemption is available and avoids any positive conflict with federal drug laws.

The department should do what makes sense and avoid tension between state and federal drug laws.

## EXHIBITS

February 1, 2019

**Exhibit #1** – Petitioner’s Comments to the Medical Cannabidiol Board contained in the board’s minutes from February 1, 2019, page 2, raising the question of whether all activity authorized by Iowa Code Chapter 124E violates federal drug laws.

June 14, 2019

**Exhibit #2** – Petitioner’s Petition to the Medical Cannabidiol Board asking the board to recommend an exemption for Iowa’s Medical Cannabidiol program from federal drug laws.

July 21, 2019

**Exhibit #3** – Petitioner’s Supplemental Argument to the Medical Cannabidiol Board asking the board to recommend an exemption for Iowa’s Medical Cannabidiol program from federal drug laws.

August 2, 2019

**Exhibit #4** – Unanimous roll call vote of the Medical Cannabidiol Board in favor of recommending an exemption for Iowa’s Medical Cannabidiol program from federal drug laws contained board’s minutes from August 2, 2019, pages 6-7.

January 1, 2020

**Exhibit #5** – Annual Report of the Medical Cannabidiol Board recommending a federal exemption from federal drug laws, page 7.

February 26, 2020

**Exhibit #6** – New York v. United States DOJ, 951 F.3d 84 (2nd Cir. 2020). Federal funding withheld for violation of federal immigration laws.

May 15, 2020

**Exhibit #7** – Federal mental health grants canceled because Maine has legal marijuana, Sun Journal, by Steve Collins.

Thank you!

Signed this 7<sup>th</sup> day of June, 2020.

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