

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FILED  
POLK COUNTY, IA  
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CLERK DISTRICT COURT

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GEORGE McMAHON, BRYON	)	
SCOTT, and BARBARA DOUGLASS,	)	CASE NO. CV 7415
Petitioners,	)	
	)	
CARL OLSEN,	)	
	)	
Intervenor,	)	RULING ON PETITION FOR
	)	FURTHER JUDICIAL REVIEW
	)	OF AGENCY ACTION
VS.	)	
	)	
IOWA BOARD OF PHARMACY,	)	
	)	
Respondent.	)	

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Petitioner's Petition for Further Judicial Review of Agency Action came on for hearing before the Court on the 9th day of October, 2009. Petitioners were represented by attorney Randall C. Wilson and Carl Olsen, intervenor, appeared in his own behalf. The respondent, Iowa Board of Pharmacy (hereafter "Board") was represented by Assistant Attorney General Scott M. Galenbeck. After reviewing the file, the documents filed on behalf of the respective parties, and listening to the arguments, the Court makes the following findings and ruling.

1. On April 21, 2009, the undersigned issued a Ruling on Petition for Judicial Review. As part of that ruling, the Court remanded the case to the board. In its order of remand, the Court provided in relevant part as follows:

"The board must determine whether the evidence presented by petitioner is sufficient to support a finding that marijuana has accepted medical use in the United States and does not lack accepted safety for use in treatment under medical supervision."

The order went on to state: "If the Board believes that the evidence presented by petitioners was insufficient to support such a finding, it should have so stated in its order."

2. In response to the Court's remand order, the Board filed a supplemental order on July 21, 2009. The Supplemental Order is incorporated by reference herein.

3. In relevant part, the Board's final decision on October 7, 2008, stated as follows:

"While neither accepting or rejecting Olsen's assertion that the medicinal value of marijuana is established by legislation adopted in other states, the Board notes that before recommending to the Iowa legislature that marijuana be moved from schedule I to schedule II, the Board would also need to make a finding that marijuana lacks a high potential for abuse. See Iowa Code 124.203 (2007). There exists no basis for such a finding in the record before the Board, as Olsen's submission offers no evidence or information on marijuana's potential for abuse. Absent such evidence or information, Olsen's request must be denied."

In its resistance to petitioner's action for judicial review, the Board argued that its decision should be affirmed by this Court because the Petitioners failed to make an adequate record before the agency. The Board asserted that petitioners failed to present evidence addressing all of the factors delineated in Iowa Code Section 124.201. As pointed out in this Court's ruling, the Court found that this argument by the Board differed from its stated reason in its written order of October 7, 2008.

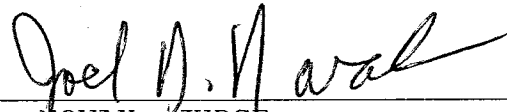
As a result, the Court concluded that if the Board's decision was based upon the insufficiency of evidence presented by the petitioners in support of their position, the Board should have expressed same in its final decision. This Court went on to direct the Board, in its remand order, to apply the correct interpretation of the law as determined by this Court, and then set forth its reasons as to why the evidence presented by petitioners was insufficient to support such a finding.

In its ruling, this Court acknowledged that the factors set forth in Iowa Code Section 124.201 were relevant in the Board's determination of whether the statutory criteria for Schedule I classification are satisfied. However, the Court concluded that Section 124.203 clearly required that the Board recommend removal of marijuana from Schedule I or reclassification under a different schedule if the Board found that marijuana "has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision." Therefore, the Court

remanded this case to the Board to set forth its reasons as to why the evidence presented by petitioners was insufficient to support such a finding.

The Court has reviewed the Supplemental Order of the Board in response to the Court's remand. After reviewing same, the Court concludes that the Board has complied with the directive of the Court's remand in that it reviewed the evidence (including testimony and exhibits) presented to the Board in connection with Olsen's petition, and having done so, determined that not only did the evidence presented by Olsen not allow the Board to make a finding relevant to the statutory criteria found in Iowa Code Section 124.201(209), it also was insufficient for a finding by the Board that marijuana has accepted medical use for treatment in the United States and does not lack accepted safety for use in treatment under medical supervision as set forth in Iowa Code Section 124.203(209).

Based upon the above, the Court finds that the Board is in full compliance with the Court's remand order and petitioners' request for further judicial review of agency action is denied.



JOEL D. MOVAK, JUDGE  
Fifth Judicial District of Iowa

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