

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<b>CARL OLSEN,</b>  Petitioner,  vs.  <b>IOWA DEPARTMENT OF PUBLIC HEALTH,</b>  Respondent.	<b>Case No. CVCV062566</b>  <b>RULING ON MOTIONS TO DISMISS</b>
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**I. INTRODUCTION**

Before the court is a Motion to Dismiss filed by the Iowa Department of Public Health on January 31, 2022. The court held a hearing on the record on March 11, 2022, at which Sam Langholtz represented the Iowa Department of Public Health; and Colin Murphy represented the Petitioner, Carl Olsen. After hearing the arguments of counsel and reviewing the court file, including the Motion and Resistance thereto, and submitted briefs, the court now enters the following ruling on the pending Motion.

**II. FACTUAL & PROCEDURAL BACKGROUND**

According to his Amended Petition filed January 12, 2022, the Petitioner (“Mr. Olsen”) belongs the Ethiopian Zion Coptic Church. Am. Pet. ¶ 9. His sincerely held religious beliefs include “[t]he sacramental, non-drug use of cannabis in bona fide religious worship.” *Id.* ¶ 10. He stopped using cannabis as a sacrament a couple decades ago, but now wishes “to resume his religious practice in a manner consistent with the secular use of cannabis extracts” permitted under Iowa’s medical cannabidiol laws. *Id.* ¶ 11

Mr. Olsen filed this initial Petition in this matter on September 24, 2021, seeking a declaratory judgment against the State of Iowa that 1) he has a lawful right to purchase, possess and use for bona fide religious purposes medical cannabidiol obtained from a licensed Iowa dispensary and that such rights are coextensive with any future amendments to chapter 124E; 2) he can raise affirmative defenses under chapters 124, 124E and 453B to any prosecution for possession of marijuana or failure to affix a drug tax stamp; and 3) he has a right to exceed the 4.5 gram per 90 day limit by providing the Iowa Department of Public Health with written certification of his religious use and needs. *See* Pet., page 4. On November 23, 2021, the State moved to dismiss the on sovereign immunity grounds. *See* Motion to Dismiss ¶ 2 (Nov. 23, 2021).

On November 24, 2021, Mr. Olsen applied for a medical cannabidiol registration card from the Iowa Department of Public Health (“IDPH”). *Am. Pet.* ¶ 12. IDPH denied the application on January 7, 2022. *Id.* ¶ 13, Ex. 2. Mr. Olsen filed a timely request for an appeal on January 20, 2022. Exhibit A (Olsen Appeal Request). The appeal is pending.

On January 12, 2022, Mr. Olsen filed this amended petition substituting IDPH for the State as Respondent. *See Am. Pet.* ¶ 2. The amended petition modified the declaratory relief requested as well, to that IDPH shall consider Mr. Olsen’s religious use of cannabis as a qualifying condition under Iowa Code section 124E.2(2) and, thereafter, respond to his application for a registration card. *Am. Pet.* at 4.

IDPH filed the pending Motion to Dismiss on January 31, 2022, seeking dismissal of Mr. Olsen’s amended petition because chapter 17A is the exclusive means of challenging the Department’s denial of a medical cannabidiol registration card and Olsen has failed to exhaust his administrative remedies; and because Mr. Olsen fails to state a claim because Iowa’s marijuana

and medical cannabidiol laws are neutral and generally applicable. Mr. Olsen resists dismissal on all grounds.

### III. MOTION TO DISMISS

#### A. LEGAL STANDARD

In deciding a motion to dismiss, “the petition is assessed in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in the plaintiffs’ favor.” *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). *See also Ritz v. Wapello Cty. Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999) (“Allegations in the petition are viewed in a light most favorable to the plaintiff and facts not alleged cannot be relied on to aid a motion to dismiss . . . .”); *Haupt v. Miller*, 514 N.W.2d 905, 911 (Iowa 1994) (“The petition should be construed in the light most favorable to the plaintiff with doubts resolved in that party’s favor in ruling on the motion.”). Furthermore, a “court considers all well-pleaded facts to be true.” *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). *See also Southard*, 734 N.W.2d at 194 (“Well-pled facts in the pleading assailed are deemed admitted.”). Affidavits may be considered alongside the pleadings. *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 (Iowa 2004).

“A motion to dismiss is sustainable only when it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted.” *Haupt*, 514 N.W.2d at 911. *See also Barbour*, 770 N.W.2d at 353 (“A court should grant a motion to dismiss only if the petition ‘on its face shows no right of recovery under any state of facts.’”) (quoting *Ritz*, 595 N.W.2d at 789); *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (2012) (reiterating the standard for granting a motion to dismiss described by the court in *Barbour*). Iowa courts recognize that this is a very high bar, and

therefore traditionally disfavor motions to dismiss. *See Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991) (remarking that both the filing and sustaining of motions to dismiss “are poor ideas”).

B. ANALYSIS

*i. Judicial Review under Iowa Code Chapter 17A is the exclusive remedy.*

Mr. Olsen wants this court to tell the IDPH, a State agency, to include his religious use of cannabis as a debilitating medical condition under Iowa Code section 124E.2(2), when considering whether it should issue him a medical cannabidiol registration card under section 124E.4(1). He argues that if IDPH does not do so, it would violate his constitutional rights to free exercise of religion under the 1<sup>st</sup> and 14<sup>th</sup> amendments to the U.S. Constitution, and Article 1 section 3 of the Iowa Constitution.

Iowa Code Chapter 124E, known as the “Medical Cannabidiol Act”, provides a mechanism for a person to apply for and the IDPH to issue a medical cannabidiol registration card, permitting the applicant to use medical cannabis as it is defined and regulated by the statute. Mr. Olsen invoked that mechanism when he applied for a medical cannabidiol registration card from the IDPH on November 24, 2021.

Judicial review is the exclusive way to challenge agency action unless a statute referencing Iowa Code chapter 17A expressly states otherwise. *See Iowa Code* § 17A.19 (“Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action.”); *Iowa Farm Bureau Fed’n v. Env’t Prot. Comm’n*, 850 N.W.2d 403, 431 (Iowa 2014) (“The IAPA establishes the exclusive means for a person or party adversely affected by

agency action to seek judicial review.”). Unless a statute expressly states otherwise, there is no exception to the exclusivity of judicial review for certiorari, declaratory judgment, or injunction. *Salsbury Labs. v. Iowa Dep't of Env't Quality*, 276 N.W.2d 830, 835 (Iowa 1979). Chapter 124E does not provide another method of judicial review aside from the exclusive review under chapter 17A. *See Iowa Code* chapter. 124E. Chapter 17A, therefore, is “the exclusive means by which” Mr. Olsen may seek judicial review of the IDPH’s action. *Iowa Code* § 17A.19.

ii. *Exhaustion of Administrative remedies is required.*

Mr. Olsen, in his brief in resistance to IDPH’s Motion to Dismiss, argues that he has not “been aggrieved or adversely affected by a final administrative decision so as to trigger judicial review under the Iowa Administrative Procedures Act. Rather, he seeks a declaratory judgment that at the time his application for a medical cannabidiol card is adjudicated, the agency should be required to consider his religious use of marijuana at least on par with qualifying health conditions that entitle patients to use marijuana extracts for secular purposes.”

Iowa Code Chapter 124E provides that before one is able to use cannabis in this State, he or she must first apply to the IDPH for a medical cannabidiol registration card, and be issued the same by the IDPH. For the purposes of this suit, anyway, Mr. Olsen is not disputing that he must go through this administrative procedure in order to be able to use cannabis. He simply wants the court, now, to tell the agency to treat his religious use of marijuana the same as a qualifying medical condition when considering his application. It doesn’t work that way.

“Exhaustion of adequate administrative remedies is generally required prior to permitting a party to seek relief via judicial review in district court.” *IES Utilities Inc. v. Iowa Dep't of Revenue & Fin.*, 545 N.W.2d 536, 539 (Iowa 1996) (*citing Iowa Code* § 17A.19(1); *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 730, 731 (Iowa 1985)).

The doctrine of exhaustion is not absolute, however. In the following limited situations, we have allowed a litigant to bypass the exhaustion requirement:

- (1) plaintiff challenges, by way of *judicial review under Iowa Code section 17A.19*, an agency action as in violation of the rulemaking procedures set forth under the APA, *see Lundy [v. Iowa Department of Human Services, 376 N.W.2d 893, 894 (Iowa 1985)]*;
- (2) plaintiff claims an adequate administrative remedy does not exist for the claimed wrong, *see Rowen v. LeMars Mut. Ins. Co., 230 N.W.2d 905, 909 (Iowa 1975)*, or stated otherwise, plaintiff will suffer “irreparable injury of substantial dimension” if not allowed access to district court prior to exhausting all administrative remedies, *see Salsbury Lab., 276 N.W.2d at 837*; or
- (3) plaintiff claims the applicable statute does not expressly or implicitly require that all adequate administrative remedies be exhausted prior to bringing an action in district court, *see Rowen, 230 N.W.2d at 909*.

*Id* (emphasis in original). None of the limited situations appear here. As to the first exception, Mr. Olsen is not challenging any rulemaking procedure. As to the third exception, Iowa Code chapter 224E does not provide for bringing any action in district court.

As to the second exception, Mr. Olsen does not claim an adequate administrative remedy does not exist for the claimed wrong, or that he will suffer “irreparable injury of substantial dimension” if not allowed access to district court prior to exhausting all administrative remedies. In fact, requiring Mr. Olsen to follow administrative procedures won’t prejudice him in any way. In a judicial review proceeding under chapter 17A, a court “shall reverse, modify, or grant other appropriate relief from agency action . . . , if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . [u]nconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.” *Iowa Code* § 17A.19(10)(a). Mr. Olsen’s constitution claims could be fully adjudicated and the declaratory relief he seeks obtained through a judicial review proceeding

under chapter 17A. Mr. Olsen must seek relief through Chapter 17A proceedings, after his administrative remedies have been exhausted.

*ii. Remaining ground for dismissal.* The court, having determined above that dismissal is appropriate as set forth above, will nevertheless address the remaining ground raised in the in the Motion to Dismiss.

IDPH asserts that even if the court reaches the merits, Mr. Olsen's suit fails to state a claim because Iowa's marijuana and medical cannabidiol laws are neutral and generally applicable. When the court is asked to get into the merits of a claim, a motion to dismiss should generally not be granted, and "nearly every case will survive a motion to dismiss under notice pleading." *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018) (quoting *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009)). If a claim is "at all debatable," the filing or sustaining of a motion to dismiss is ill-advised. *Id.* This case is no exception.

In order to sustain IDPH's motion on this ground, the court would have to make a factual determination that all of the laws operating separately or together to prevent Mr. Olsen from legally using marijuana in Iowa are indisputably, not just facially, but operationally neutral. *Mitchell Cty. v. Zimmerman*, 810 N.W.2d 1, 10 (Iowa 2012) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534, 113 S.Ct. 2217, 2227, 124 L.Ed.2d 472, 491 (1993) *Lukumi*, 508 U.S. at 534, 113 S.Ct. at 2227, 124 L.Ed.2d at 491 (1993)). " 'Facial neutrality is not determinative,' we must examine the ordinance for "governmental hostility which is masked, as well as overt." *Id.* Given the pleadings, Mr. Olsen is entitled to attempt to show government hostility in the operation of these laws. Dismissal on the merits at this stage would not be appropriate.

#### IV. RULING

For the reasons set forth in sections III(B)(i) and III(B)(ii) above,

IT IS THEREFORE ORDERED that Motion to Dismiss Petitioner's Petition filed by the Iowa Department of Public Health is **GRANTED**. The Petition in the above captioned case is dismissed. Costs are assessed to the Petitioner.



State of Iowa Courts

**Case Number**  
CVCV062566  
**Type:**

**Case Title**  
CARL OLSEN V STATE OF IOWA  
ORDER REGARDING DISMISSAL

So Ordered

Joseph Seidlin, District Court Judge  
Fifth Judicial District of Iowa

Electronically signed on 2022-05-03 14:13:09