

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p><b>CARL OLSEN,</b> Petitioner,</p> <p>vs.</p> <p>IOWA DEPARTMENT OF PUBLIC HEALTH, Respondent.</p>	<p>No. <b>CVCV062566</b></p> <p><b>FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT</b></p>
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**COMES NOW** Petitioner Carl Olsen, through counsel, Colin Murphy, and for the First Amended Petition for Declaratory Judgment states:

**PARTIES**

1. Petitioner, Carl Olsen, (“**Olsen**”), is a resident of Polk County, Iowa.
2. Respondent is the Iowa Department of Public Health (“**Department**”).

**JURISDICTION AND VENUE**

3. The court has jurisdiction over this matter pursuant to Iowa Code § 602.6101 (2021).
4. Venue is proper pursuant to Iowa Code § 616.3(2) (2021) because this matter arises in Polk County.

**DECLARATORY RELIEF**

5. This declaratory action is based on Olsen’s constitutional right to the free exercise of religion under both the First Amendment and article 1, section 3 of the Iowa Constitution to purchase medical cannabidiol products from licensed Iowa dispensaries under Iowa Code chapter 124E, possess and use the same and enjoy any affirmative defenses available, including those in chapters 124 and 453B.

**FACTUAL ALLEGATIONS**

6. In 2014, the State enacts Iowa Code Chapter 124D (2014), 2014 Iowa Acts Chapter 1125. This act provides an exemption for non-psychoactive cannabinoids found in the plant *Cannabis sativa L.* or *Cannabis indica* or any other preparation that is essentially free from plant material and has a tetrahydrocannabinol (“THC”) level of no more than three percent. *See* Iowa Code § 124D.2(1) (2014). These marijuana extracts are to be obtained from an out-of-state source. *See id.* § 124D.6(1)(b) (2014).

7. In 2017, the State repeals chapter 124D by enacting Iowa Code Chapter 124E. 2017 Iowa Acts Chapter 162. This act provides for the manufacture, distribution, retail sales of the marijuana extracts in Iowa. *See* Iowa Code § 124E.2(6) (2017). These marijuana extracts are to be obtained from an out-of-state source, if not available in Iowa. *See id.* § 124E.12 (2017). Retail sales begin on December 1, 2018.

8. In 2020, the State removes the three percent cap on THC. Iowa Code § 124E.2(6) (2020). The law now allows 4.5 grams of THC every 90 days. *See id.* § 124E.9(14). The limit can be increased by a health care practitioner. *Id.* § 124E.9(15)(b).

9. Olsen is a member of the Ethiopian Zion Coptic Church.

10. The sacramental, non-drug use of cannabis in bona fide religious worship is one of Olsen’s sincerely held religious beliefs.

11. Olsen stopped using cannabis as a sacrament following the decision in *Employment Div. v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990), and wishes now to resume his religious practice in a manner consistent with the secular use of cannabis extracts permitted under chapters 124, 124E and 453B.

12. On November 24, 2021, Olsen submitted an application fee in the amount of \$100 and filed an application for a registration card with the Department pursuant to Iowa Code section 124E.4(1)(3).

13. On January 7, 2022, the Department denied Olsen's application for a registration card. *See Ex. 2.*

14. Olsen will appeal the Department's decision.

**LIMITED RELIGIOUS EXEMPTION**

15. Olsen hereby incorporates the previous allegations as though they were fully set forth herein.

16. The First Amendment provides: “[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” U.S. Const. amend. I.

17. The First Amendment is applicable to the states through the Due Process clause of the Fourteenth Amendment.

18. The Iowa Constitution similarly provides: “[t]he general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” Iowa Const. art. 1, § 3.

19. The Free Exercise Clauses prohibit a state from enforcing a regulatory law that is neither neutral nor generally applicable. *See Mitchell County v. Zimmerman*, 810 N.W.2d 1 (Iowa 2012) (noting a regulatory law may lack sufficient general applicability when it contains exceptions that undermine its purpose).

20. Iowa Code chapter 124 is not neutral toward religion because it contains a religious exemption for peyote. *See Iowa Code § 124.204(8)* (2021) (“[n]othing in [Chapter 124] shall apply to peyote when used in bona fide religious ceremonies of the

Native American Church.”) The peyote exemption was enacted in 1967, which immediately followed the federal religious exemption created by administrative regulation in 1966 and carried over into the federal Controlled Substance Act of 1970. *See* 54 Fed. Reg. 4679 (1966); 21 C.F.R. § 166.3(c)(3) (1968); currently codified at 21 C.F.R. § 1307.31.

21. Iowa Code chapters 124 and 453B are no longer generally applicable with respect to marijuana as a result of the secular exemption carved out for medical cannabidiol in chapter 124E.

22. Olsen’s sincerely held religious belief in the sacramental use of cannabis is at least equal to the secular use of cannabis extract permitted under chapters 124, 124E and 453B.

**WHEREFORE**, Olsen respectfully requests this Court to enter a judgment that declares:

- (1) The Department shall consider Olsen’s religious use of cannabis as a qualifying condition under Iowa Code section 124E.2(2) and, thereafter, respond to Olsen’s application for a registration card.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

**GOURLEY REHKEMPER LINDHOLM, P.L.C.**

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ATTORNEY FOR PETITIONER

Original filed.

Copy to counsel via EDMS.

January 7, 2022

Mr. Carl Olsen  
130 E Aurora Ave  
Des Moines, IA 50313

Dear Mr. Olsen,

Your application for an Iowa medical cannabidiol registration card was received by the Department on November 24, 2021. A complete patient application requires the submission of a healthcare practitioner certification form, pursuant to Iowa Code Chapter 124E.4.1.c, below:

1. Issuance to a patient. Subject to subsection 6, the department may issue a medical cannabidiol registration card to a patient who:
  - c. Submits a written certification to the department signed by the patient's health care practitioner that the patient is suffering from a debilitating medical condition.

Because you did not submit a written certification from your health care practitioner, the Department is unable to approve your application, and it has been denied. Your credit card was automatically processed for the application fee when you submitted your application. Your payment is in the process of being refunded to you.

You maintain the right to appeal this decision. The process for appeal of this denial is outlined in 641 IAC 154.7, below:

- *If the department denies an application for or cancels a medical cannabidiol registration card, the department shall inform the applicant or cardholder of the denial or cancellation and state the reasons for the denial or cancellation in writing. An applicant or cardholder may appeal the denial or cancellation of a medical cannabidiol registration card by submitting a request for appeal to the department by certified mail, return receipt requested, within 20 days of receipt of the notice of denial or cancellation. The department's address is Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Upon receipt of a request for appeal, the department shall forward the request within five working days to the department of inspections and appeals. A contested case hearing shall be conducted in accordance with 641—Chapter 173.*

Sincerely,



Owen Parker, MPH  
Chief, Bureau of Medical Cannabidiol  
Iowa Department of Public Health

Cc: Joseph Husak

