

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

<p><b>CARL OLSEN,</b> Appellant,</p> <p>vs.</p> <p>IOWA DEPARTMENT OF PUBLIC HEALTH, Respondent.</p>	<p>Docket No. <b>22IDPH0002</b></p> <p><b>REQUEST FOR REVIEW BY DIRECTOR</b></p>
--	--

TO: Director, Iowa Department of Public Health

**COMES NOW** Appellant Carl Olsen, through counsel, Colin Murphy, and in support of the Request for Review by the Director of the August 11, 2022 Proposed Decision by the Administrative Law Judge states:

1. On November 24, 2021, Appellant applied for a medical cannabidiol registration card from the Iowa Department of Public Health (the “**Department**”).
2. In lieu of a certification from a health care provider, Appellant submitted a declaration regarding his sacramental use of cannabis as a member of the Ethiopian Zion Coptic Church.
3. On January 7, 2022, the Department denied his application for the card.
4. Appellant timely appealed and raised both Free Exercise and Due Process arguments before the agency.
5. On August 11, 2022, the Administrative Law Judge denied the appeal.
6. The ruling acknowledges Appellant’s Due Process claim and partially addresses it, but does not rule on it. *See Proposed Decision at 3.*
7. More importantly, however, the ruling defers Appellant’s entire Free Exercise

claim to the district court for judicial review. *See id.*

8. In *Shell Oil v. Bair*, the Iowa Supreme Court opined:

In *Aircraft & Diesel Equipment Corp.*, the Court's principal reason for taking this position was that permitting the administrative process to first run its course may eliminate the need for reaching potential constitutional claims. We agree with this reasoning and add yet another reason for imposing the exhaustion requirement. Even facial constitutional issues are more effectively presented for adjudication based upon a specific factual record. The place for such record to be developed is, we believe, before the agency entrusted with the determination of the adjudicative facts. *Moreover, it can be expected that facial constitutional challenges will be coupled with claims that the legislation is unconstitutional as applied to the litigant. Efficient and effective judicial administration is therefore better served by having the entire proceeding first determined by the agency.*

*Shell Oil v. Bair*, 417 N.W.2d 425, 430 (Iowa 1987) (citations omitted) (emphasis added).

9. Appellant's constitutional claims – the *sine qua non* of his appeal - are part of the “entire proceeding” that must be determined by the Department prior to judicial review.
10. “[T]he purpose of these rules [regarding error preservation] is to give both the opposing party and the agency an opportunity to address the issue.” *Brewbaker v. State Bd. of Regents*, 843 N.W.2d 466, 471 (Iowa App. 2013) (noting constitutional issues can be raised for first time on petitions for rehearing and intra-agency appeals).
11. The lack of deference given on judicial review to the Department's ruling on constitutional matters, or the fact that the constitutional issues are reviewed *de novo* on appeal, does not mean the Department lacks authority to address these issues in the first place.

12. Appellant is entitled to a ruling by the Director that addresses the issues raised by the parties on appeal, including:

- (a) Appellant is not collaterally estopped from asserting a religious use claim to possessing and using medical cannabidiol under Chapter 124E;
- (b) Chapter 124E and the administrative rules interpreting it lack due process because they do not provide for a religious exemption or waiver; and
- (c) The Department erred in denying Appellant's application for a medical cannabidiol registration card because the statute is underinclusive.

**WHEREFORE**, Appellant respectfully requests the Director reverse the Department's denial of his application for a medical cannabidiol registration card.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

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

440 Fairway, Suite 210

West Des Moines, Iowa 50266

T: (515) 226-0500

F: (515) 244-2914

E-mail: ccmurphy@grllaw.com

ATTORNEY FOR APPELLANT

Email to:

Iowa Department of Inspections and Appeals

Division of Administrative Hearings (annie.adamovicz@dia.iowa.gov)

The Hon. Carla Hamborg (carla.hamborg@dia.iowa.gov)

Laura Steffensmeier (laura.steffensmeier@ag.iowa.gov)

Heather Adams (heather.adams@ag.iowa.gov)

Sarah Reisetter (sarah.reisetter@idph.iowa.gov)

Owen Parker (owen.parker@idph.iowa.gov)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on August 31, 2022

By:  U.S. Mail  FAX  
 Hand Delivered  Overnight Courier  
 Certified Mail  Electronic Mail

Signature: Colin Murphy