

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>REPLY TO RESPONDENT’S BRIEF IN SUPPORT OF PROPOSED DECISION</b></p>
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**COMES NOW** Appellant Carl Olsen, through counsel, Colin Murphy, and for the Reply to Respondent’s Brief in Support of Proposed Decision states:

1. On page 10, Respondent claims that “[m]edical cannabidiol falls under the definition of marijuana in Iowa Code section 124.101(20), and is therefore a Schedule I controlled substance” for purposes of evaluating neutrality and general applicability.
2. As an extract of marijuana, it is correct to say that medical cannabidiol fits within the definition of marijuana. *See* Iowa Code § 124.101(20) (2022) (“Marijuana means all parts of the plants of the genus Cannabis . . . the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols.”) However, medical cannabidiol is not a Schedule I controlled substance under Iowa Code chapter 124. Schedule I controlled substances have “no accepted medical use in treatment” or “lack[] accepted safety for use in treatment under medical supervision.” *See* Iowa Code § 124.203(1)(b) (2022). Rather, the substance should be considered an *exception*

to chapter 124 that takes it outside the context of controlled substances, which is why it is found instead in chapter 124E.

3. The Eighth Circuit notes that “collateral estoppel does not apply if the controlling facts or legal principles have changed significantly since Olsen’s prior judgments.” *Olsen v. Mukasey*, 541 F.3d 827, 831 (8<sup>th</sup> Cir. 2008). Both the controlling facts and legal principles have not remained substantially static since that ruling. The possession and use of marijuana is no longer prohibited across the board here once the Iowa legislature carved out a secular exception from chapter 124 in 2017. Appellant’s current argument – that chapters 124 and 124E are underinclusive - may rhyme with the prior cases, but it does not repeat.

**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

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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 October 31, 2022		
By:	<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail	<input checked="" type="checkbox"/> Electronic Mail
Signature: Colin Murphy		