

BOARD OF PHARMACY EXAMINERS

Petition by Carl Olsen and others
for immediate action
relating to the medical use of marijuana.

}

MEMORANDUM
IN SUPPORT OF EMERGENCY
PETITION FOR IMMEDIATE ACTION

**MEMORANDUM IN SUPPORT OF PETITION
657 IAC § 26.2**

**THE BOARD CANNOT MEET ON JANUARY 14, 2011, AND
VOTE TO CHANGE THE RECOMMENDATION IT MADE IN OPEN SESSIONS ON
FEBRUARY 17, 2010, AND NOVEMBER 24, 2010, IN CLOSED SEESION
WITHOUT ANY PRIOR NOTICE THAT SUCH ACTION WAS BEING CONSIDERED**

Scheduling of controlled substances in Iowa is defined by Iowa Code § 124.201, to wit:

Annually, within thirty days after the convening of each regular session of the general assembly, the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in sections 124.204, 124.206, 124.208, 124.210 or 124.212, which it deems necessary or advisable.

FACTS

Pursuant to Iowa Code § 124.201, the Iowa Board of Pharmacy has an affirmative duty to recommend changes in the schedules of controlled substances enumerated in Iowa Code §§ 124.204, 124.206, 124.208, 124.210, and 124.212.

On February 17, 2010, the Iowa Board of Pharmacy voted unanimously in open session to recommend that the Iowa Legislature remove marijuana from Schedule I, Iowa Code § 124.204, and place it in Schedule II, Iowa Code § 124.206. See: Minutes from the February 16, 2010, Iowa Board of Pharmacy Meeting, attached as **Exhibit #1**; Agenda for the February 17, 2010, Iowa Board of Pharmacy Meeting, attached as **Exhibit #2**; Minutes from the February 17, 2010, Iowa Board of Pharmacy Meeting, attached as **Exhibit #3**.

On November 24, 2010, the Iowa Board of Pharmacy voted unanimously in open session to pre-file legislation with the Iowa Legislature to remove marijuana from Schedule I, Iowa Code § 124.204, and place it in Schedule II, Iowa Code § 124.206. See: Agenda for the November 24, 2010, Iowa Board of Pharmacy Meeting, attached as **Exhibit #4**; Minutes from the November 24, 2010, Iowa Board of Pharmacy Meeting, attached as **Exhibit #5**; Pre-filed Legislation by the Iowa Board of Pharmacy, 1274DP, attached as **Exhibit #6**; Senate Study Bill 1016, attached as **Exhibit #7**; Lobbyist Declarations on SSB 1016, attached as **Exhibit #8** (showing Iowa Board of Pharmacy Executive Director Lloyd Jessen for SSB 1016 on January 20, 2011, and Iowa Board of Pharmacy Executive Officer Terry Witkowski for SSB 1016 on January 18, 2011).

On January 14, 2011, the Iowa Board of Pharmacy voted secretly in closed session to remain neutral regarding a bill currently pending in the Iowa House of Representatives Committee on Public Safety which would remove from Schedule II, Iowa Code § 124.206, and place it in Schedule I, Iowa Code § 124.204, in violation of the board's duty to support the recommendation it made in open sessions on February 17, 2010, and November 24, 2010. See: Agenda for the January 11, 2011, Iowa Board of Pharmacy Meeting, attached as **Exhibit #9**; Agenda for the January 14, 2011, Iowa Board of Pharmacy Meeting, attached as **Exhibit #10**; E-mail sent February 3, 2011, by Executive Director Lloyd Jessen to Carl Olsen, attached as **Exhibit #11**; Pre-filed Legislation by the Governor's Office of Drug Control Policy, 1203DP, attached as **Exhibit #12**; House Study Bill 4, attached as **Exhibit #13**; Lobbyist Declarations on HSB 4, attached as **Exhibit #14** (showing Iowa Board of Pharmacy Executive Director Lloyd Jessen neutral on HSB 4 on January 20, 2011, and Iowa Board of Pharmacy Executive Officer Terry Witkowski neutral on HSB 4 on January 18, 2011); House File 183, attached as **Exhibit #15**; Lobbyist Declarations on HF 183, attached as **Exhibit #16** (showing Iowa Board of Pharmacy Executive Director Lloyd Jessen and Iowa Board of Pharmacy Executive Officer Terry Witkowski have taken no position opposing HF 183 as of February 6, 2011 at 12:15 p.m.).

ARGUMENT

The Board is clearly in violation of Iowa Code §§ 124.201, 124.203, and 124.205, for taking a neutral position on a bill that would put marijuana in a schedule not currently recommended by the Iowa Board of Pharmacy.

The Board is clearly in violation of the Iowa Open Meeting Law, Iowa Code Chapter 21, particularly for: failure to give notice it was going to vote on a recommendation on HSB 4, in violation of Iowa Code § 21.4; and voting in closed session on a non-confidential matter, in violation of Iowa Code § 21.5.

CONCLUSION

At its meeting on February 7, 2011, the Board must reverse its decision to remain neutral on HF 183 and declare its opposition to HF 183 pursuant to Iowa Code § 21.6(3)(c) ("void any action taken in violation of this chapter") and Iowa Code § 124.201 ("board shall recommend to the general assembly"). See: Agenda for the February 7, 2011, Iowa Board of Pharmacy Meeting, attached as **Exhibit #17**.

Dated this 6th day of February, 2011.

Carl Olsen
Post Office Box 4091
Des Moines, IA 50333
515-288-5798 home phone
515-343-9933 cell phone
E-mail: carl-olsen@mchsi.com