

BEFORE THE IOWA BOARD OF PHARMACY

Re: ) Case No. 2011-46  
 )  
PETITION FOR ) ORDER DENYING  
DECLARATORY ORDER ) PETITION  
 )

I. PROCEDURAL HISTORY

On March 13, 2011, a Petition for Declaratory Ruling (hereinafter, "Petition") was received by the Iowa Board of Pharmacy ("Board") requesting that the Board clarify "the impact of the Iowa Board of Pharmacy's February 17, 2010, recommendation that the Iowa Legislature remove marijuana from schedule I and reclassify it as a schedule II controlled substance here in Iowa." The Petition was reviewed by the entire Board at its April 27, 2011 meeting, at which time the Board received oral comments regarding the Petition.

II. JURISDICTION

Iowa Code § 17A.9 (2011) grants the Board authority to "issue a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." *See, also* 657 Iowa Administrative Code chapter 27. This authority to issue is considered the agency counterpart of the judicial declaratory judgment process. *Ruthven Consolidated School District v. Emmetsburg Community School District*, 382 N.W.2d 136, 139 (Iowa 1986). The primary jurisdiction of the

Board concerns regulation of pharmacy practices. Iowa Code chapters 147 and 155A (2011). *See, Houck v. Board of Pharmacy*, 752 N.W.2d 14, 17 (Iowa 2008).

### III. DISCUSSION

#### A. *Specifics of Petition*

The Petition sets out four questions:

- "1. Are pharmacists lawfully allowed to dispense schedule II controlled substance (sic) in Iowa without federal authorization?
2. Are physicians lawfully allowed to prescribe schedule II controlled substances in Iowa without federal authorization?
3. Is the explanatory language in Senate Study Bill 1016 (SSB 1016) factually correct?
4. As a matter of Iowa law – as opposed to federal law – would it be legal for an Iowa pharmacist to dispense marijuana if marijuana is reduced to schedule II?"

None of these questions asks the Board to apply a particular statute, order or rule – within the primary jurisdiction of the Board – to a specific set of circumstances.

Instead, the questions seek general information and invite comment about government regulation of controlled substances.

#### B. *Analysis of Individual Questions*

Each of the petition's four questions is examined individually below.

1. *Are pharmacists lawfully allowed to dispense schedule II controlled substance (sic) in Iowa without federal authorization?*

This question does not ask the Board to apply a particular statute, order or rule – within the primary jurisdiction of the Board – to a specific set of circumstances. It does not, therefore, frame an appropriate request for a declaratory order. Nevertheless, the Board observes that Iowa pharmacists are regulated by the Board pursuant to Iowa Code chapters 147 and 155A (2011). Unless restricted by an order of the Board, Iowa pharmacists are permitted to dispense schedule II controlled substances. 657 Iowa Administrative Code chapter 10. *See also* Iowa Code §§ 124.205-206 (2011) (criteria for listing in schedule II; substances included in schedule II).

The Board is unsure what "federal authorization" is referred to by the Petition, but notes that individual Iowa pharmacists are not licensed or registered as pharmacists by the federal government. Federal laws are not within the primary jurisdiction of the Board.

*2. Are physicians lawfully allowed to prescribe schedule II controlled substances in Iowa without federal authorization?*

This question does not ask the Board to apply a particular statute, order or rule – within the primary jurisdiction of the Board – to a specific set of circumstances. Statutes and rules relating to physicians are not within the primary jurisdiction of the Board. Federal laws are not within the primary jurisdiction of the Board. The question does not, therefore, frame an appropriate request for a declaratory order.

*3. Is the explanatory language in Senate Study Bill 1016 (SSB 1016) factually correct?*

This question does not ask the Board to apply a particular statute, order or rule – within the primary jurisdiction of the Board – to a specific set of circumstances.

Instead, the question seeks verification of facts. Declaratory order proceedings are not a "vehicle" for resolution of fact issues. *National Cattle Congress, Inc. v. Iowa Racing and Gaming Commission*, No. 07-0412, May 14, 2008; 2008 WL 2042653 (Iowa Ct. App. 2008; unpublished opinion). The Petition does not, therefore, frame an appropriate request for a declaratory order. The Board observes that Senate Study Bill 1016 has not been adopted as legislation. Indeed, the study bill was not even voted out of the Senate committee to which it was assigned, rendering as moot any legal controversy regarding its content. See Iowa Legislature website; "Current Bill History."

4. *As a matter of Iowa law – as opposed to federal law – would it be legal for an Iowa pharmacist to dispense marijuana if marijuana is reduced to schedule II?*

This question does not ask the Board to apply a particular statute, order or rule – within the primary jurisdiction of the Board – to a specific set of circumstances. The Petition does not, therefore, frame an appropriate request for a declaratory order. Nevertheless, the Board observes that Iowa pharmacists are regulated by the Board pursuant to Iowa Code chapters 147 and 155A (2011). Unless restricted by an order of the Board, Iowa pharmacists are permitted to dispense schedule II controlled substances. 657 Iowa Administrative Code chapter 10. See also Iowa Code § 124.205-206 (2011) (criteria for listing in schedule II; substances included in schedule II).

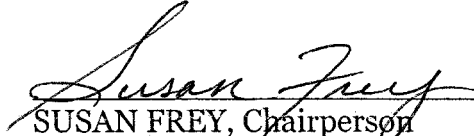
#### IV. CONCLUSION

The petition does not contain an appropriate request for a declaratory order. Under that circumstance, the Board lacks authority to issue a declaratory order. Iowa Code § 17A.9 (2011).

V. ORDER

The Petition for Declaratory Order should be denied.

IT IS SO ORDERED this 28<sup>th</sup> day of June 2011.

  
SUSAN FREY, Chairperson  
Iowa Board of Pharmacy

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