

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>v.</p> <p>IOWA BOARD OF PHARMACY, Respondent.</p>	<p>No. CVCV056841</p> <p>RESISTANCE TO MOTION TO DISMISS</p>
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COMES NOW the Petitioner, Carl Olsen, by and through counsel, Colin Murphy, and for the Resistance to the Motion to Dismiss states:

1. The Board of Pharmacy is vested with the authority to administer the regulatory provisions of Chapter 124 as well as the discretion to not only interpret the schedules of controlled substances, but also make recommendations to the general assembly for rescheduling.
2. Iowa Code section 124.204(8) provides an exemption for the bona fide religious use of peyote by members of the Native American Church. The section further provides for rulemaking so that those supplying the Native American Church with peyote can comply with the requirements of Chapter 124.
3. This example of a specific exemption for religious use provided under Chapter 124 demonstrates the Board may consider whether a similar exemption for another substance also controlled under schedule I is “necessary or advisable.”
4. The Board’s administrative rules do not expressly prohibit a private individual from petitioning the Board to recognize an exemption under Chapter 124 for a bona fide religious use of a substance listed in the schedules.
5. Petitioner is simply asking the Board to evaluate the factors set forth in Iowa Code section 124.201(1) and apply them to his request for an exemption for the

bona fide religious use of cannabis extracts, which are already permitted for use by certain persons under Chapter 124E. Petitioner is not requesting the Board evaluate whether the use of cannabis extracts itself is a bona fide religious practice.

6. The Board has twice previously considered petitions for rescheduling filed by Mr. Olsen.
7. The interests of judicial economy also favor remanding the petition for consideration by the Board rather than dismissing it. Otherwise, Mr. Olsen would be required to petition the Board for rulemaking in order to first establish a process to then subsequently petition the Board to make a specific recommendation to the general assembly for a religious use exemption, which is the very issue now before the district court on judicial review.

WHEREFORE, Petitioner Carl Olsen respectfully prays the court, upon hearing and argument, remand the matter to the Board for further proceedings not inconsistent with its ruling.

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