

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| <p>CARL OLSEN, Petitioner,</p> <p>v.</p> <p>IOWA DEPARTMENT OF INSPECTIONS, APPEALS, AND LICENSING, Respondent.</p> | <p>Case No. CVCV066477</p> <p><i>BRIEF IN SUPPORT OF RESISTANCE TO MOTION TO CORRECT OR RECAST</i></p> |
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A hearing has been scheduled for May 10, 2024, on the Respondent’s Motion to Correct or Recast filed on January 2, 2024 (Docket No. 0005). Petitioner, Carl Olsen, filed a Resistance to the Respondent’s motion on January 3, 2024, and additional Resistance to the Respondent’s motion on January 4, 2024 (Docket numbers 0006 – 0009). While this matter has been pending, the Petitioner became aware of, and the Iowa Legislature enacted, the Iowa Religious Freedom Restoration Act, signed by the Governor on April 2, 2024 (see Motion for Judicial Notice, April 8, 2024, Docket No. 0022).

The Petitioner, Carl Olsen, submits this brief in support of the Resistance to the Motion to Correct or Recast.

1. The Petition for Rules was filed on September 26, 2023, with the caption “IOWA DEPARTMENT OF INSPECTIONS AND APPEALS”. See Certified Agency Record at page 004. The agency accepted the petition without returning it for a defect in the caption.

2. In the body of the petition, the Petitioner requested a meeting with the agency provided for by rule 481—2.4(1) (2023). See Certified Agency Record at page 007. The agency conducted this meeting on Wednesday, October 4, 2023, as requested by the Petitioner. The Petitioner met with two employees of the Iowa Department of Inspections, Appeals, and Licensing, Jill Stuecker and Sue Mears.

3. The agency may deny a petition because it does not substantially conform to the required form. *See* rule 481—2.1(2) (2023) Petition for rule making. The agency did not deny the petition for nonconformity.

4. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency’s rejection of the petition. *See* rule 481—2.4(3) (2023). The agency did not deny the petition for nonconformity.

5. The rules for the Iowa Board of Pharmacy are similar. A petition may be denied for nonconformity. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board’s rejection of the original petition. *See* rule 657—26.4(3) (2023).

6. On April 2, 2024, the Iowa Religious Freedom Act became the law in Iowa. It applies to all laws and regulations adopted before, on, or after its enactment. *See* Senate File 2095, Section 5(4), and Section 8.

7. The authority of the department to make recommendations to the legislature appears broader than the authority of the board to make recommendations to the legislature. *See* Iowa Code § 2.16 (broad authority for agencies), Iowa Code § 124.201 (more narrow and specific authority for the board).

8. Indeed, the department filed the board’s annual recommendations on the schedules of controlled substances this year. *See* Iowa Code § 2.16, Iowa Code § 124.201, and TLSB 5301DP (5) 90, filed on December 27, 2023 (attached as Exhibit 1 to Petitioner’s Motion for Judicial Notice filed on April 26, 2024, Docket No. 0024).

9. The Petitioner cannot see how the Respondent is prejudiced in any way by captioning the Respondent as the department rather than the board.

10. The Petitioner thinks it is prejudicial to caption the Respondent as the board rather than the department. The department, for example, could interpret the Religious Freedom Restoration Act to require proposing a new chapter like Chapter 124E, to accommodate religious exemptions for controlled substances. It does not appear that the board has equally broad power. To be sure, the Petitioner thinks the department already has implicit authority to create rules to accommodate religious exemptions for controlled substances, but at the very least the department could propose such rules to the Iowa legislature (least “restrictive means” component of the Religious Freedom Restoration Act, Senate File 2095, Section 6(1)).

WHEREFORE, the Petitioner prays the court deny the Respondent’s Motion to Correct or Recast the caption in this case.

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By: /s/ Carl Olsen

All parties served via EDMS on May 2, 2024.