

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>v.</p> <p>IOWA DEPARTMENT OF INSPECTIONS, APPEALS, AND LICENSING, Respondent.</p>	<p>Case No. CVCV066477</p> <p>AMENDED RESISTANCE TO MOTION TO CORRECT OR RECAST</p>
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COMES NOW the Petitioner, Carl Olsen, and in support of the Resistance to Motion to Correct or Recast, states:

1. On September 26, 2023, the petitioner filed a Petition for Rulemaking with the Iowa Department of Inspections, Appeals, and Licensing (the “department”).
2. The department referred the petition to the Iowa Board of Pharmacy and it was stamped received on September 26, 2023, by the Iowa Board of Pharmacy. See Exhibit 1 attached to this resistance.
3. On July 1, 2023, multiple programs across four agencies become part of the Iowa Department of Inspections and Appeals (DIA) as a new organizational structure for state government went into effect. DIA became the Department of Inspections, Appeals, and Licensing (DIAL). The Iowa Board of Pharmacy (the “board”) was moved from under the Iowa Department of Health and Human Services to the DIAL.¹
4. 2023 Iowa Acts, ch. 19, § 1430, Senate File 514, assigned the duties of board to the department: “Section 10A.104, Code 2023, is amended by adding the following new subsections: NEW SUBSECTION. 18. Enforce the law relative to ‘Health-related Professions’, Title IV, subtitle 3, excluding chapter 147A.”

¹ <https://dial.iowa.gov/about/about-dial>

5. The petitioner did not object to the department asking the board to review the petition because the board has explicit authority over Iowa Code § 124.204(8), the exception in Chapter 124, the Iowa Uniform Controlled Substances Act (the “act”), for the non-drug, non-prescription use of a substance in Schedule I of the act.
6. However, the act was also recently amended in 2014, 2017, and 2020, to include an exception for the non-drug, non-prescription use of another substance in Schedule I of the act, Iowa Code § 124.401(5)(c), over which the board does not appear to have explicit authority.
7. The petitioner is not sure this is significant, but if it actually is significant, the petitioner does not consent to correcting or recasting the respondent as the board instead of the department.

The petitioner resists the motion because the petition for rulemaking was not filed with the board. The petition for rulemaking was accepted by the board on behalf of the department.

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By: /s/ Carl Olsen