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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,	* Case No. CVCV066477
	*
Petitioner,	*
vs.	* TRANSCRIPT OF PROCEEDINGS-
	* RESPONDENT'S MOTION TO
	* CORRECT OR RECAST PETITION
	*
IOWA DEPARTMENT OF	*
INSPECTIONS, APPEALS,	*
AND LICENSING,	*
	*
Respondent.	* Friday, May 10, 2024

The above-captioned matter convened for hearing before the Honorable Lawrence P. McLellan, District Judge of the Fifth Judicial District of Iowa, at 1:34 p.m., on May 10, 2024, at the Polk County Historic Courthouse, courtroom 220, Des Moines, Iowa.

A P P E A R A N C E S

Pro Se Petitioner:	CARL OLSEN 130 E. Aurora Avenue Des Moines, IA 50313
For Respondent:	LINDSEY BROWNING Assistant Attorney General Agency Counsel Division Iowa Department of Justice 1305 E. Walnut Street Des Moines, IA 50319

JULIE A. MOON, CSR, RPR
Official Court Reporter
Des Moines, Iowa
Julie.Moon@iowacourts.gov

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I N D E X

WITNESSES

PAGE

(No witnesses were called.)

E X H I B I T S

(No exhibits were offered.)

P R O C E E D I N G S

1
2 (The proceedings convened at 1:34 p.m.,
3 on May 10, 2024, with the Court, counsel, and petitioner
4 present.)

5 THE COURT: Let the record reflect we're
6 here in the matter of Carl Olsen versus Iowa Department
7 of Inspections, Appeals, and Licensing; case is
8 CVCV066477. Today's hearing is with regard to the
9 motion to correct or recast the petition filed by the
10 State back on January 2nd of 2024.

11 I have Ms. Browning here on behalf of the
12 State, and Mr. Olsen is here personally.

13 I've read everything that has been filed. I
14 guess my question is, Ms. Browning, why isn't the
15 petition that Mr. Olsen filed here appropriate? I
16 understand if there was a change in the -- I'm just
17 going to call it the structure of the Agency last year,
18 which would have been I think in effect at the time he
19 filed his petition last year before the Iowa Department
20 of Inspections, Appeals, and Licensing, which he
21 captioned in that fashion.

22 I understand that the Department referred to
23 the Board of Pharmacy, but as I look at the rules, the
24 definition of "agency" under the statute, unless it's
25 changed, either one would be the agency in this matter.

1 Am I correct?

2 MS. BROWNING: Judge, I do believe that
3 given the nature of Mr. Olsen's request as it pertains
4 to the petition for rulemaking authority, that authority
5 vests exclusively with the Board at this particular
6 time.

7 I do know that there is movement to change
8 that, and I do believe that legislation which is
9 effective July 1 will ultimately change that
10 potentially. But at the time that Mr. Olsen filed his
11 petition and the Board heard his request, it would have
12 been the rulemaking authority that's solely vested with
13 the Board that rendered that decision. So in terms of
14 the authority of the entity who denied his request,
15 again, that would be the Board.

16 And I understand that it's a difficult time
17 in state government in determining where authority lies,
18 but at least that, as I understand it, is what I would
19 say.

20 The Board actually -- If you look further
21 into that definition, Your Honor, as I understand it,
22 the Board is considered an agency.

23 THE COURT: No, I know. That's why I was
24 saying both the Department and the Board would be deemed
25 agencies under the statute, as I read it.

1 I guess -- And I'm only anticipating
2 Mr. Olsen's argument that his objection may be, in part,
3 he doesn't want to recast and have the Board of Pharmacy
4 be the agency if ultimately the Iowa Department of
5 Inspections, Appeals, and Licensing had some duty that
6 they did not undertake based upon this rulemaking and,
7 therefore, the State comes back and says, Well, you
8 haven't named the right agency.

9 I don't know if that's your argument,
10 Mr. Olsen, but...

11 MR. OLSEN: Sort of but I'll -- yeah.

12 THE COURT: So why would it be improper to
13 leave Iowa Department of Inspections, Appeals, and
14 Licensing, which is the department that oversees the
15 Board of Pharmacy, why would that be improper in this
16 action?

17 MS. BROWNING: I think that in this
18 particular respect, Your Honor, at the time that this
19 occurred, they don't oversee the Board of Pharmacy, they
20 would have supported the rulemaking authority, meaning
21 staff comes from the Department of Inspections, Appeals,
22 and Licensing.

23 Financially the Board's resources has
24 already been matriculated with those of the other boards
25 which ultimately became the licensing division of the

1 Department of Inspections, Appeals, and Licensing; but
2 the actual authority addressing the request of Mr. Olsen
3 would have derived from the Board, not from the
4 Department.

5 THE COURT: Would it be improper if he
6 simply added the Board of Pharmacy to the present
7 petition and let the chips fall where they may once we
8 get to the merits?

9 MS. BROWNING: I believe, Your Honor, that
10 could be a workable solution, but as I sit here today, I
11 don't have the authority to represent the Department of
12 Inspections, Appeals, and Licensing. I do have the
13 authority as the assigned representative for the Board
14 of Pharmacy. And that may rapidly, over the next year
15 and a half, become a distinction without a difference,
16 but right now, to my understanding, it is a distinction
17 with a difference.

18 THE COURT: But I suppose if I ordered that
19 the Board simply be added and leave the Iowa Department
20 of Inspections, Appeals, and Licensing in place as a
21 respondent, then the attorney general's office would
22 have to assign and they'd have to get different counsel
23 for the Department versus your role as counsel for the
24 Board; right?

25 MS. BROWNING: And I believe that that might

1 be a workable and appropriate solution given what I
2 understand the authority to have been at the time that
3 Mr. Olsen's request was considered.

4 So like I say, that's changing going forward
5 and rapidly, but I don't -- I think at the time we need
6 to preserve what the actual balance of authority was
7 there.

8 THE COURT: Okay. Anything you want to add,
9 Mr. Olsen?

10 MR. OLSEN: Yeah. Can I read something?

11 THE COURT: Yes, just read it slowly because
12 my court reporter has to take it down.

13 MR. OLSEN: Yeah.

14 THE COURT: And all I'm addressing today,
15 Mr. Olsen -- because I know you've already filed your
16 brief on the underlying substantive issue.

17 MR. OLSEN: Yeah.

18 THE COURT: So I'm not addressing that
19 today. All I'm addressing is whether the caption -- the
20 issue of whether the Iowa Department of Inspections,
21 Appeals, and Licensing should be the named respondent or
22 whether that should be the Iowa Board of Pharmacy or
23 potentially both. So that's the only issue I'm
24 addressing. Go ahead then.

25 MR. OLSEN: All right. Well, in the motion

1 that the Department -- that the Agency filed -- I'll
2 just say Agency -- it said that it referred to Iowa Code
3 Chapter 17A.19(4)(b). Okay. And subsection 4 is just
4 the rules for filing a petition for judicial review in
5 this court. And (b) says that you have to attach the
6 final decision, and I did all that.

7 So on the face of the Department's motion,
8 I've complied with that rule, and it doesn't say
9 anything about changing the name of the respondent.

10 So the petition was based on two things:
11 one was Chapter 124.204(8), which is a religious
12 exemption for a controlled substance in Schedule I. And
13 it was also based on a new exception in the enforcement
14 section in section 401 subsection (5)(c) for this
15 nonprescription cannabis program the State set up.

16 And the Board doesn't have authority over
17 that section, so either -- If a Department has authority
18 over that section, it wouldn't be the pharmacy board
19 because their authority is very narrow in section 201.
20 So that's why I don't want to drop the Department as a
21 respondent. Having both on there would certainly be
22 acceptable to me.

23 So the Department is not limited by
24 section 201 because they have Iowa Code Chapter 2
25 section 16 which allows them to file legislation.

1 In the final decision it says, We don't have
2 authority to do this without further legislation. Well,
3 there you go. That's a possible remedy, they could
4 recommend legislation. But I don't think the Board has
5 that broad of authority that they could recommend a new
6 chapter in the Code or recommend rules or -- I said they
7 could recommend rules, that's my argument, but...

8 They have the power to recommend changes in
9 the scheduling and that's it. The Department has
10 broader authority to make recommendations. They could
11 propose an entire chapter and submit that to the
12 legislature. So I don't want to preclude any possible
13 remedy in this case by changing the name.

14 The pharmacy board took no action on the
15 petition. At the meeting one of the members moved to
16 deny the petition, withdrew the motion, made a new
17 motion not to take any action, and that passed.

18 In the final decision, there's all this
19 rationale, but that wasn't part of the Board's
20 discussion, that had to have been added by the employees
21 that work for the Department. So in my opinion that was
22 written by the Department, not the Board.

23 And then the Religious Freedom Restoration
24 Act comes along and amends every statute and regulation
25 in Iowa in past, present, or future, adds a component to

1 the law that says you have to consider religious
2 exceptions. So I argued that was implicit but now it's
3 explicit, so -- if it wasn't before. So now every
4 department has a duty to figure out how to accommodate
5 religious requests. Well, rulemaking would be the most
6 civilized way to do that.

7 So those are my arguments why. But if
8 Ms. Browning is willing to not make an objection here to
9 changing it to both, I think the Department could come
10 in later and object to that if they want to, but
11 Ms. Browning says she doesn't represent them.

12 Thank you.

13 THE COURT: Anything you wanted to add?

14 MS. BROWNING: No, Your Honor. I think that
15 I would have some clarification regarding some of what
16 he said, but for purposes of today, I don't know that we
17 need to get that far into the meat and potatoes of the
18 issue.

19 At this time the Board of Pharmacy would not
20 object to the Department of Inspections, Appeals, and
21 Licensing being considered a party or having the Board
22 of Pharmacy added in addition to that -- in addition to
23 that entity as a party and we can begin to work through
24 the issues as presented by Mr. Olsen from there.

25 Again, I don't know whether I'll be

1 representing both where the interests may go certainly
2 as I sit here this afternoon, but that's something that
3 we can work through through the course of the action.

4 THE COURT: Okay. So I'm going to -- I'll
5 enter a written order to this, but for purposes of today
6 so you folks know, I'm going to order that the Iowa
7 Board of Pharmacy be added as a respondent in the case
8 and we'll proceed with the two agency respondents. And
9 I'll just enter a written order to that effect, so in
10 the future filings, you can just add both to the
11 caption. Okay?

12 MR. OLSEN: Yeah.

13 THE COURT: Okay. And then -- We can go off
14 the record, Julie.

15 (Hearing concluded at 1:46 p.m.)

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