
WASHINGTON BOARD OF PHARMACY
PETITION FOR ADOPTION, AMENDMENT, REPEAL

INTRODUCTION

Comes now CannaCare, the Cannabis Defense Coalition, the American Alliance for Medical Cannabis and a broad coalition of other organizations and individuals to file a petition for adoption, amendment, repeal. The purpose of this petition is to repeal marijuana from the Washington State Schedule I designation that is contained in RCW 69.50.204. Both State and Federal law requires that marijuana be transferred to a lower schedule of Washington State's version of the Uniform Controlled Substances Act, due to the fact that marijuana is incorrectly classified in Washington State Schedule I (RCW 69.50.204), and because marijuana has accepted medical use in the United States and, therefore, no longer meets the criteria to be listed in Washington State Schedule I (RCW 69.50.204).

The purpose of this petition is to also request that the Washington State Board of Pharmacy hold a hearing to apply the Washington State Schedule 1 test outlined in RCW 69.50.203. Additionally, the purpose of this petition is also to put the federal government on notice that the State of Washington feels that marijuana has accepted medical uses and that marijuana should not only be taken out of Schedule I on a state level, but rescheduled on federal level as well. Federal law requires that marijuana be reclassified when marijuana is accepted by a state for medical use and the application for having marijuana reclassified under federal law can be found in 21 C.F.R. § 1308.43. Washington State, has an obligation to at least attempt to request federal reclassification of marijuana, to protect its

citizens from federal penalties, when they exercise their medical marijuana rights under Washington State law RCW 69.51A. Holding a hearing to apply the Washington State Schedule I test is the first step in that process.

GROUND FOR RESCHEDULING MARIJUANA

The following fifteen states and the District of Columbia have all accepted the safety of marijuana for medical use:

- (1) ALASKA, STATUTES § 17.37.070 (2008)
- (2) ARIZONA, ARS TITLE 36 CHAPTER 28.1 (2011)
- (3) CALIFORNIA, HEALTH & SAFETY CODE § 11362.5 (2008)
- (4) COLORADO, CONSTITUTION ARTICLE XIII, SECTION 14 (B) (2007)
- (5) D.C., D.C.LAW 13-315; 57 DCR 3360 (2010)
- (6) HAWAII, REVISED STATUTES § 329-121 (3) (PARAGRAPH 3) (2008)
- (7) MAINE, REVISED STATUTES § 2383-B (5) (2008)
- (8) MICHIGAN, MEDICAL MARIJUANA ACT (2008)
- (9) MONTANA, CODE ANNOTATED, § 50-46-102(5) (2007);
- (10) NEVADA, REVISED STATUTES ANNOTATED § 453A.120 (2007);
- (11) NEW JERSEY, N.J.S. C.24:6I-1 (2010)
- (12) NEW MEXICO, STATUTES ANNOTATED § 26-2B-2 (2008);
- (13) OREGON, REVISED STATUTES § 475.302(8) (2007);
- (14) RHODE ISLAND, GENERAL LAWS § 21-28.6-3(4) (2008);
- (15) VERMONT, STATUTES ANNOTATED § 4472(10) (2007);
- (16) WASHINGTON, (RCW) § 69.51A.010 (2) (2008).

All of these states and the District of Columbia allow medical marijuana use, possession, and cultivation which confirms that marijuana has accepted medical uses.

In the United States Federal drug law, 21 U.S.C. § 903, gives the states the authority to determine accepted medical use. See, **Gonzales v. Oregon**, 546 U.S. 243, 269-270 (2006): Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the

statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States “great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons”.

Medtronic, Inc. v. Lohr, 518 U.S. 470, 475, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (quoting **Metropolitan Life Ins. Co. v. Massachusetts**, 471 U.S. 724, 756, 105 S. Ct. 2380, 85 L. Ed. 2d 728 (1985)). “The Government, in the end, maintains that the prescription requirement delegates to a single Executive officer the power to affect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality”. “The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it.” **Gonzales v. Oregon**, 546 U.S. at 275.

Marijuana now has currently accepted medical use in 15 states, and the District of Columbia, because according to the United State Supreme Court ruling in **Gonzales v. Oregon**, 546 U.S. 243, 269-270 (2006) federal law defines accepted medical use to be whatever the states say it is, and because the DEA's own Administrative Law Judge has already determined that marijuana is safe for use under medical supervision, marijuana no longer meets the criteria required for inclusion in Schedule I on either a federal or state level. The fact that the principle psychoactive ingredient in marijuana, THC, has been rescheduled by the DEA twice (as well as once internationally), shows that even the pure psychoactive ingredient in marijuana is safer than anything in Schedules I or Schedule II.

In **United States v. Oakland Cannabis Buyers' Cooperative**, 532 U.S. 483 (2001), the U.S. Supreme Court held that the DEA could not put marijuana in

Schedule I if marijuana had any accepted medical use: “Schedule I is the most restrictive schedule” (footnote omitted). The Attorney General can include a drug in Schedule I only if the drug "has no currently accepted medical use in treatment in the United States," "has a high potential for abuse," and has "a lack of accepted safety for use under medical supervision." §§ 812(b) (1) (A)-(C). Under the statute, the Attorney General could not put marijuana into Schedule I, “if marijuana had any accepted medical use.” In **Gonzales v. Raich**, 545 U.S. 1(14-15) (2005) the U.S. Supreme Court noted that marijuana could be rescheduled. The federal CSA provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules. § 811. The U.S. Supreme Court noted the rescheduling process had not found any accepted medical use of marijuana in the United States prior to 1996. (See **Raich**, 545 U.S. at page 15 n.23.) Schedule I is only the "initial" schedule for marijuana, and Congress never intended the initial schedules to be permanent. Indeed, 21 U.S.C. § 811(a) requires the DEA to "add to", "transfer between", or "remove" substances from the schedules as necessary. See 21 U.S.C. § 812(c) (“ . . . Initial Schedules of controlled substances Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name or brand name designated: Revised schedules are published in the Code of Federal Regulations, Part 1308 of Title 21, Food and Drugs.”).

A study published in the March 1, 1990 issue of the Proceedings of the National Academy of Sciences stated that "there are virtually no reports of fatal cannabis overdose in humans" and attributed this safety to the low density of cannabinoid receptors in areas of the brain controlling breathing and the heart.

WASHINGTON STATE MEDICAL MARIJUANA ACT

After the Washington State medical marijuana law was passed and the Medical Quality Assurances Commission added qualifying conditions, the Washington State Board of Pharmacy had an affirmative obligation to apply the Washington State Schedule 1 test RCW 69.50.203 to determine if marijuana still met the criteria to be listed in schedule I. In a previous petition to apply the Washington State Schedule 1 test RCW 69.50.203 filed in 2009, the Washington State Board of Pharmacy was asked to explain why the board does not think marijuana has medicinal value, the board responded that “the board did not say that there was no medical use”. The board also stated that “this board does not regulate herbal substances” and that “The Board of Pharmacy’s authority relates to legend drugs and substances available at pharmacies”.

OTHER STATES RESCHEDULING MARIJUANA

The State of Iowa Pharmacy Board finally applied the Iowa State Schedule 1 test after being required to do so by the Iowa courts, the Iowa Pharmacy Board sent a recommendation to the Iowa Legislature that Marijuana should be removed from Schedule 1. The Oregon State Board of Pharmacy acted to remove marijuana from the list of “Schedule I Controlled Substances,” in accordance with a bill the legislature passed in 2009. The new law, ORS 475.059 established by Senate Bill 728, requires marijuana’s removal from a list of controlled substances that have a “high abuse potential and no acceptable medical use in the United States.” The Board placed marijuana into “Schedule II Controlled Substances,” which contains substances that have a “high abuse potential with severe psychological or physical dependence liability,” but are accepted for medical use in the United States.

The Oregon Pharmacy Board also reviewed scientific and medical literature and heard testimony from experts and members of the public before voting to move marijuana into Schedule II. This action is consistent with Oregon's assertion that marijuana does have an acceptable medical use.

2010 WASHINGTON STATE PETITION

In a 2010 Washington State petition to remove marijuana from Schedule I, the Board cited "Section b" of the Washington State Schedule I test in RCW 69.50.203 as cause to deny a petition to hold a hearing to remove marijuana from schedule I, however the U.S. Supreme has ruled in Norml v. Ingersoll, 497 F.2d 654 (DC Cir. 1974), that the international treaty, and the sections of the CSA are not cause to deny a petition. In that business meeting before the Washington State Board of Pharmacy, the board insisted that decisions made by other states did not factor into what the Board had to consider. This statement is completely out of line with the Uniform Controlled Substances Act itself, and any court interpretations of the disputed facts under Washington State Administrative law **RCW 34.05.001** and under the full faith and credit clause under **Article IV, Section I**, of the U.S. Constitution.

GOVERNOR'S STATEMENTS ON RESCHEDULING MARIJUANA

Washington State Governor Christine Gregoire, has stated that she is a medical marijuana supporter and cited a former aide's use of medical marijuana. She further stated that she would use her position as Chair of the National Governor's Association to lead an effort to change marijuana federal classification from a Schedule I to a Schedule II drug. Governor Gregoire has stated to the press that she would ask the governors of the 14 other states that authorize medical marijuana to petition the Justice Department and federal regulators to reclassify the drug.

MAY 2, 2011

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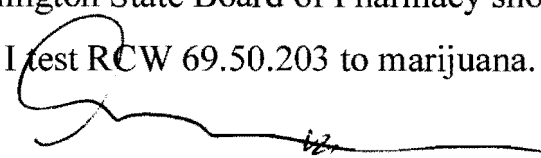
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CONCLUSION

Under the Washington State definition for a Schedule I controlled substances, Schedule 1 Test RCW 69.50.203; Section (a), a substance must meet all of the following criteria to qualify as a Schedule 1 substance:

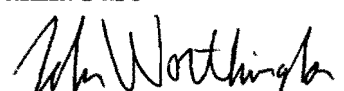
- (1) Has high potential for abuse;
- (2) Has no accepted medical use in treatment in the United States, and;
- (3) Lacks accepted safety for use in treatment under medical supervision;

This Schedule no longer applies to marijuana because marijuana has been found to have accepted medical use internationally, as well as in the United States, and should be removed from Schedule I in the Washington State Controlled Substances Act. Section (b) is not proper cause to deny a petition as per the U.S. Supreme Court decision in Norml v. Ingersoll, 497 F.2d 654 (DC Cir. 1974), and the Washington State Board of Pharmacy should hold a hearing to apply the state schedule I test RCW 69.50.203 to marijuana.



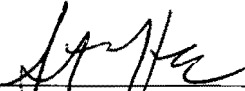
Steve Sarich III
CannaCare

Dated May 2, 2011



John Worthington
The American Alliance Medical Cannabis

Dated May 2, 2011



Steve Fager
Cannabis Defense Coalition

Dated MAY 2, 2011

Christine Gregoire
Governor, Washington

Dated _____

Signed [Signature]
Printed Kori Pellingshead
Organization _____

Dated 5/2/11

Signed [Signature]
Printed Michael Stafford
Organization Boilermakers #104

Dated 5/2/11

Signed [Signature]
Printed Dwayne Taylor
Organization _____

Dated 5/2/11

Signed [Signature]
Printed Craig French
Organization _____

Dated 5-2-11

Signed [Signature]
Printed DARIX WARE
Organization GREEN HEALTH

Dated 5/2/11

Signed [Signature]
Printed Sydney Baker
Organization GREEN HEALTH

Dated 5-2-11

Signed Wes Abney

Dated 5/2/11

Printed Wes Abney

Organization North West Leaf

Signed Marcus Weidaver

Dated 5/2/11

Printed Marcus Weidaver

Organization None

Signed Brandon Carver

Dated _____

Printed Brandon Carver

Organization None

Signed Valerie Steel

Dated 5/2/11

Printed Valerie Steel

Organization None

Signed Tim Fager

Dated 5/2/11

Printed Tim Fager

Organization patient

Signed Marcio Vega

Dated 5/2/11

Printed Marcio Vega

Organization CDC

Signed Phillip M. Moeck

Dated 2011-05-02

Printed PHILLIP MOECK

Organization CANNABIS DEFENSE COALITION

Signed Michael Warren

Dated 5/2/11

Printed Michael Warren

Organization CDC

Signed Lydia Warren

Dated 5/2/11

Printed LYDIA WARREN

Organization CDC

Signed Rachel E. Rurtz

Dated 5/2/11

Printed Rachel E. Rurtz

Organization Cannabis Defense Coalition

Signed Lydia Ensley

Dated 5/2/11

Printed LYDIA ENSLEY

Organization Sentry Medical Group

Signed Josanna McKee

Dated 5/2/11

Printed JOANNA MCKEE

Organization Green Cross PT Coop

Signed Jeanne Black-Ferguson

Dated 5/2/11

Printed JEANNE BLACK-FERGUSON

Organization GRAMMAS FOR GANJA

Signed Jacque Saenz

Dated 5/2/11

Printed Jacque C. Saenz

Organization Green Cross & patient

Signed Laura Johnson

Dated 5/2/11

Printed Laura Johnson

Organization Green Hope

Signed Demis

Dated 5-2-11

Printed Demis Triadafillou

Organization Green Hope

Signed R. S. Miller

Dated 5-2-11

Printed R. S. Miller

Organization Green Cross Pt. COOP

Signed Doc EK Diebold

Dated 5-2-11

Printed Doc Leong

Organization Self Dockygreen1@yahoo.com

360-878-5271

SEA HEMP FEST