

Dear Board of Pharmacy members,

Since my unsuccessful attempt in 1991 to reschedule marijuana by petition to the Board of Pharmacy based on the conclusions of DEA Administrative Law Judge Francis Young in a 1987 ruling, the imperative to reclassify marijuana has been greatly increased by the adoption of the Oregon Medical Marijuana Act in 1998. After legislative attempts in many sessions since, only in 2009 was the issue addressed properly.

It is my conclusion that properly classified, marijuana would be found in Schedule IV or V considering the lack of significant safety concerns and the fact that the highly concentrated synthesized active ingredient in marijuana, sold as Marinol is found in Schedule III. I firmly believe that a review based only upon scientific medical considerations would so place marijuana.

Senate Bill 728 directs the Board of Pharmacy to classify marijuana as a controlled substance in Schedule II, III, IV or V of the Oregon Schedule of Controlled Substances found in Division 80 of the Oregon Administrative Rules. In preparation for such action, a review of pertinent statute and existing rule is instructive.

Regarding the formulation and adoption of Oregon Administrative Rules, ORS 183.332 in part provides that: "it is ... the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..." Thus we find that OAR 855-080-0020, was created under authorization of ORS 475.005 (6) which states in part that: "Controlled substance": (a) Means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035.

Stemming from that, OAR 855-80-0020 provides that: "Pursuant to ORS 475.005(6) those drugs and their immediate precursors classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. Sections 811 to 812 and as amended by the Board pursuant to ORS 475.035 are the controlled substances for purposes of regulation and control under the Act. Those schedules are set out in OAR 855-080-0021 through 855-080-0026" Thus we see in this case that Oregon statute ORS 475.005 (6) adopted the Federal Controlled Substances Act, 21 U.S.C. 811-812, in its entirety and that OAR 855-80-20 does also.

Examining 21 U.S.C. 812 (attached) we find that this statute establishes five schedules of controlled substances in 812 (a) and sets out the findings required for each of the schedules in 812 (b). 812 (b) is of great importance in any action to reclassify any substance on the Schedule of Controlled Substances in that this is the only location of the only federal listing of criteria or findings which must be met in order to properly classify a substance on the Schedule.

In Oregon, the requirements of ORS 475.035 for reclassifying a substance closely parallel those in 21 U.S.C. 812 and seek the same type of findings.

Reviewing the Schedules I-V it can be seen that the findings required for each schedule address only three issues: 1) the potential for abuse of the substance by those who use it, 2) the existence of currently accepted medical use of the substance and 3) the type of problems which would be expected to be observed in those who do abuse the substance. Each of these findings is quantifiable and can be backed by medical science based facts. It is noteworthy that no other criteria or findings are discussed.

By adopting 21 U.S.C. 812 into Oregon Statute, it follows that the only findings or criteria which may be used to classify a substance on the Schedule of Controlled Substances found in OAR 855-80-15-28 are those which are found in Schedules I-V in U.S.C. 21 812. Thus, applicable rulemaking procedures in this instance do not include the adoption of required findings or criteria which vary from

those found in 21 U.S.C. 812. It is obvious that Oregonians have the authority to and have had numerous opportunities to provide by statute for other required findings to supplement the list found in 21 U.S.C. 812 for use in classifying substances on Oregon's Schedule of Controlled Substances, but they have not.

It has apparently been suggested that the Board of Pharmacy should consider the reclassification of marijuana using not only the lawfully adopted findings or criteria set forth in 21 U.S.C. 812, but also a fourth criteria related to the lack of existence of a tightly controlled distribution system similar to that used to distribute all other medically useful controlled substances. It has apparently been argued that without the protection of such a system, the likelihood of abuse will rise and thus such a system should be part of the consideration. While that logic may appeal to some, it is flawed and the proposed new criteria directly conflicts with the law and must not be included in the deliberations.

Discussing the concept that such a tightly controlled distribution system would protect society from the unlawful diversion of the marijuana and thus reduce the possibility that it will be abused, an objective review of the current prescription distribution system and consideration of the widely known rapidly increasing abuse and addiction rate among those accessing pharmaceutical medications clearly show otherwise. In fact one has to but Google Pharmaceutical Addiction, to find significant proof of the damaging leakage from the prescription based distribution system. Regarding many controlled substances, that cover of protection supposedly provided by the current prescription distribution system is more like a badly leaking roof than a sound protective shelter. We have to look no further than the summary of our enabling legislation, SB 728 to find more evidence that the prescription system is indeed flawed and that flaw results in great societal harm.

The first sentence of that summary says, "Subjects person who manufactures or delivers controlled substance in Schedule IV and thereby causes death to person to maximum of five years imprisonment, \$125,000 fine, or both." If the system can not protect us from the societal harm of an innocent person's death caused by the abuse of even Schedule IV substances it is not a useful criteria for classifying any substance, especially one which has never caused a death. Clearly the overall situation regarding many highly abused pharmaceuticals shows that creating new criteria or needed findings based on the lack of a controlled distribution system will not likely provide the protection sought by such a move.

I must iterate that the current placement of marijuana in Schedule I can be historically shown to be a politically based classification. Congress, which so placed it, is not a science oriented body, but is totally politically oriented. The statutorily required reclassification of it in Oregon's Schedule of Controlled substances must not use political judgments in that process. Only scientifically based findings adhering to the requirements of 21 U.S.C. 812 must be used in the process or the rule adopted thereby will have been adopted without compliance with the cited applicable statutorily directed rule making procedures.

The use of findings or criteria not found in 21 U.S.C. 812, in fulfilling the provisions of SB 728 would immediately invite the filing of a petition asking for a Judicial review of the adopted rule pursuant to ORS 183.400- "Judicial determination of validity of rule" based upon the premise that the "rule was adopted without compliance with applicable rulemaking procedures."

Thank you for your attention

Laird Funk
15680 Williams Hwy.
Williams, Oregon, 97544
541-846-6759

Attachment

Section 812. Schedules of Controlled Substances

Establishment

(a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970 and shall be updated and republished on an annual basis thereafter.

Placement on Schedules; Findings Required

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) Schedule I. --

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II. --

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) Schedule III. --

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV. --

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V. --

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.