

BRIAN MICHAELS, PC
Attorney At Law
259 East Fifth Avenue
Suite 300-D
Eugene, Oregon 97401
Telephone: 541.687.0578
Fax: 686.2137

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OREGON BOARD OF PHARMACY

RE: SCHEDULING MARIJUANA

Members of the Board of Pharmacy:

As it stands now, the difference between marijuana being a schedule II rather than a schedule I has little if any legal consequence. Although marijuana is a schedule I, it is excepted from much of the consequences of being a schedule I--- it is the only B felony (possession or delivery for consideration) to be included among felonies which can be reduced to a misdemeanor (ORS 161.705(1)(b)&(c)), or which can be expugnable(ORS 137.225). ORS 475.860(2) allowed Delivery of Marijuana *For Consideration* to be a 'B Felony,' thereby subject to the benefits mentioned. Bringing it to a schedule II, would bring it within those felonies which would ordinarily be allowed to be reduced to a misdemeanor or expunged. Manufacturing as a schedule I or schedule II would still remain outside either of those benefits.

Ironically, delivery of marijuana for NO consideration (giving it away) has always been NOT included in the benefits of misdemeanor treatment or expungement However, now, in an attempt to finally fix

this anomaly, this same legislature has changed the law to make delivery for NO consideration a C felony (ORS 475.860 (1)(b)).

I bring this to your attention to put in perspective the legal significance of what the legislature has implored you to accomplish. We know the Legislature originally contemplated simply giving you a mandate to place marijuana as schedule II; similar to the mandate for methamphetamine to be placed as Schedule I. The legislature made a determined effort to expand your charge to include all possible schedule classifications. What we learn from this change is straight forward - the legislature considered schedule II to be inadequate; presumptively because there would be little if any legal consequence to the change. This can also be found in the legislature's decision to make delivery for no consideration a C Felony.

In terms of your charge from the legislature, it is equally safe to say they would not have wanted you to perform an act with no purpose. Accordingly, taking all these factors into consideration, it would be less than sufficient to interpret the responsibility given you by this legislature to schedule marijuana at the same schedule the same legislature decided to NOT be your specific duty.

Thank you for attention and courtesy.

BRIAN MICHAELS