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 expungable(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 1 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.

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BRIAN MICHAELS