SOUTH DAKOTA DEPARTMENT OF HEALTH

DIVISION OF LICENSURE & ACCREDITATION

Legal Services | Policy, Rules, & Legislation | Health Protection | Vital Records |
Licensure & Certification | Health Data & Reporting | Medical Cannabis |
Infrastructure & Accreditation | Professional & Occupational Boards

October 22, 2026

Jason Karimi
[redacted]
Sioux Falls, SD 57104

SENT VIA USPS

RE: Response to Document Entitled "Petition for Declaratory Ruling"

Jason Karimi,

This letter responds to your document entitled "Petition for Declaratory Ruling," received by the South Dakota Department of Health on August 31, 2026, in which you request that the Department issue a ruling regarding the applicability of South Dakota controlled-substance statutes following a change in federal marijuana scheduling. You submitted a similar request on February 19, 2026, to which the Department responded on March 19, 2026.

On October 6, 2026, South Dakota Attorney General Marty J. Jackley issued Official Opinion No. 26-06 addressing the impact of federal rescheduling of marijuana. A copy of the opinion is enclosed. The opinion states, in relevant part: "Because federal law explicitly permits state medical-marijuana programs, South Dakota's program may continue to operate as it has without impact from marijuana's federal rescheduling to a Schedule III controlled substance. How the program functions in the future will be a policy determination at the discretion of the Legislature or the voters of South Dakota."

As you noted, under SDCL 34-20B-27, the Department "shall make recommendations to the Legislature that a substance be added, deleted, or rescheduled when the department determines that such substance has a different potential for abuse." This statutory duty is triggered solely by the Department's own determination regarding a substance's potential for abuse. The Legislature did not create a petition mechanism authorizing private individuals to compel the Department to initiate such a determination or to commence rescheduling proceedings. The decision to undertake any review or to formulate a recommendation lies exclusively within the Department's statutory discretion.

Your current request asks the Department to resolve abstract questions of statutory interpretation, including whether the Legislature's enactment of SDCL chapter 34-20G constitutes "legislative recognition of accepted medical use," and whether cannabis "continues to meet Schedule I criteria." These inquiries concern legislative intent and policy and do not constitute an "applicability" determination within the meaning of SDCL 1-26-15 or ARSD 44:62:01.

The Department therefore declines to issue what would amount to an advisory opinion to you on matters reserved to the Legislature. *See generally State v. Schroeder*, 2004 S.D. 21, 674 N.W.2d 827 (discussing how the Legislature is tasked with changing controlled substance laws); *State v. Moschell*, 2004 S.D. 35, 677 N.W.2d 551 ("[N]o branch may encroach on the powers of another.").

The Department remains willing to receive and review information submitted by members of the public, and any materials you submit will be forwarded to the appropriate program staff for consideration. However, any decision to initiate a statutory review or to issue a recommendation must be based on the Department's independent assessment under SDCL 34-20B-27 and, if made, will be directed to the Legislature in accordance with statute. If you have additional background materials or data you wish to provide for the Department's consideration, you may submit them at any time.

You may also wish to contact your individual legislative representatives to discuss these matters, as decisions regarding controlled-substance policy fall within the Legislature's authority. A full list of legislative contacts is available at: https://sdlegislature.gov/Legislators/Contacts/71.

Respectfully,

Jennifer M. Jorgenson
Special Assistant Attorney General
Chief Legal Counsel
South Dakota Department of Health

Enclosure