

PETITION FOR DECLARATORY RULING

AND MANDATORY SCHEDULING REVIEW OF CANNABIS

Pursuant to SDCL §§ 1-26-13, 1-26-15, 34-20B-11, and 34-20B-27

Before the South Dakota Department of Health

Petitioner: Jason Karimi

[REDACTED]

Sioux Falls, South Dakota [REDACTED]

[REDACTED]

[REDACTED]

Date: _____

I. NATURE OF PETITION

This Petition is submitted pursuant to:

- SDCL § 1-26-13 (Petition for Rulemaking)
- SDCL § 1-26-15 (Declaratory Rulings by Agencies)
- SDCL § 34-20B-11 (Schedule I Criteria)
- SDCL § 34-20B-27 (Departmental Duty to Recommend Rescheduling)

Petitioner seeks:

1. A formal declaratory ruling regarding whether cannabis (marijuana) may lawfully remain classified as a Schedule I substance under SDCL § 34-20B-11 in light of South Dakota's medical cannabis statutes; and
2. Initiation of the review and recommendation process required by SDCL § 34-20B-27 if the statutory criteria for Schedule I classification are no longer satisfied.

This Petition contains the substance of the amendment sought, the rules implicated, the legal grounds supporting the request, and Petitioner's identifying information as required by SDCL § 1-26-13.

II. RELIEF REQUESTED

Petitioner respectfully requests that the Department:

1. Issue a declaratory ruling determining whether cannabis satisfies all three elements required for Schedule I classification under SDCL § 34-20B-11;

2. Determine whether the enactment of SDCL Chapter 34-20G constitutes legislative recognition of accepted medical use under South Dakota law;
3. Determine whether cannabis continues to meet Schedule I criteria as a matter of statutory interpretation;
4. Initiate proceedings and make recommendations to the Legislature as required by SDCL § 34-20B-27 if the statutory criteria are no longer satisfied; and
5. Issue written findings and conclusions constituting final agency action subject to judicial review under SDCL § 1-26-30.

III. STATUTORY FRAMEWORK

A. Schedule I Criteria — SDCL § 34-20B-11

A substance may be included in Schedule I only if:

1. It has a high potential for abuse;
2. It has no accepted medical use in the United States; and
3. It lacks accepted safety for use under medical supervision.

All three elements are mandatory.

Failure of any one element disqualifies a substance from Schedule I classification.

B. Departmental Duty — 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 statute imposes a mandatory duty when the legal or factual basis for scheduling changes.

C. South Dakota’s Medical Cannabis Statutes — Chapter 34-20G

South Dakota law expressly:

- Defines “medical cannabis”;
- Authorizes physician certification;
- Permits patient possession and use;
- Regulates licensed cultivation and dispensing;
- Protects qualified patients from arrest and prosecution;
- Recognizes medical treatment under practitioner supervision.

The Legislature has therefore enacted a comprehensive statutory framework recognizing regulated therapeutic use of cannabis.

Whether such formal legislative recognition is compatible with the statutory phrase “no accepted medical use in the United States” presents a question requiring formal agency interpretation.

IV. FEDERAL SCIENTIFIC REEVALUATION

In 2023, the United States Department of Health and Human Services completed a scientific and medical evaluation of cannabis under the federal Controlled Substances Act and formally recommended that cannabis be rescheduled from Schedule I to Schedule III.

That recommendation concluded that cannabis no longer satisfies Schedule I criteria under federal law.

The Drug Enforcement Administration initiated formal rulemaking proceedings in response to that recommendation.

Additionally, a subsequent Executive Order (see Exhibit E) directed federal agencies to continue or expedite review of marijuana scheduling.

While federal scheduling does not control state classification, federal scientific reevaluation is directly relevant to:

- Assessment of abuse potential;
- Determinations of accepted medical use; and
- Safety under medical supervision.

As documented in Exhibit G, the Department of Justice Office of Legal Counsel concluded that HHS’s two-part analytical framework for determining currently accepted medical use is legally sufficient under the Controlled Substances Act. DEA has acknowledged and cited that framework in subsequent Federal Register scheduling actions.

These developments constitute changed circumstances warranting review under SDCL § 34-20B-27.

V. LEGAL QUESTION PRESENTED

This Petition presents a question of statutory interpretation:

Can cannabis legally remain classified as having “no accepted medical use in the United States” when South Dakota law affirmatively regulates and authorizes its medical use under Chapter 34-20G?

Or does the Legislature’s enactment of Chapter 34-20G constitute statutory recognition inconsistent with continued Schedule I classification?

Petitioner respectfully submits that these questions require formal agency interpretation and written findings.

VI. REQUEST FOR FORMAL ADMINISTRATIVE PROCEEDING

Petitioner requests that the Department:

1. Open a formal proceeding under SDCL Chapter 1-26;
2. Issue written findings of fact and conclusions of law;
3. Determine whether cannabis satisfies SDCL § 34-20B-11;
4. Determine whether SDCL § 34-20B-27 requires a recommendation to the Legislature; and
5. Issue a final written determination within the timeframe required by SDCL § 1-26-13 or § 1-26-15.

Petitioner further requests service upon the Interim Rules Review Committee and Code Counsel as required by statute.

VII. CONCLUSION

South Dakota law defines Schedule I substances by mandatory statutory criteria. South Dakota law simultaneously establishes a comprehensive medical cannabis program recognizing therapeutic use under practitioner supervision.

Federal scientific authorities have formally concluded that cannabis does not satisfy Schedule I criteria under federal law, and federal agencies have articulated and applied a clarified analytical framework for determining accepted medical use.

Where statutory definitions mirror federal criteria, and the underlying scientific determinations have materially evolved, continued classification requires reasoned interpretation grounded in the statutory text.

These developments create substantial grounds for statutory review and formal agency determination.

Petitioner respectfully requests issuance of a declaratory ruling and initiation of the statutory review process.

Respectfully submitted,

Jason Karimi

/s/ _____

Date: _____

STATUTORY FOOTNOTES

SDCL § 1-26-13. Petition for rules—Denial or initiation of proceedings—Copies to committee and code counsel.

An interested person, other than an inmate as defined in § 1-15-20.1, may petition an agency requesting the promulgation, amendment, or repeal of a rule. The petition must contain the text or substance of any new rule or amendment sought, the identification of any rule sought to be repealed, reasons for the proposal, and the name and address of the petitioner. Within thirty days after submission of a petition, the agency shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with § 1-26-4. The agency shall serve a copy of any petition and denial on the members of the Interim Rules Review Committee and code counsel.

SDCL § 1-26-15. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of a petition for declaratory ruling as to the applicability of any statutory provision or of any rule or order of the agency. No inmate as defined in § 1-15-20.1 may petition an agency for a declaratory ruling on the applicability of a statutory provision, rule, or order of the agency. A ruling disposing of a petition has the same status as an agency decision or order in a contested case. The agency shall file a copy of the ruling with code counsel for publication in the Administrative Rules of South Dakota.

SDCL §1-26-30. Right to judicial review of contested cases--Preliminary agency actions. A person who has exhausted all administrative remedies available within any agency or a party who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. If a rehearing is authorized by law or administrative rule, failure to request a rehearing will not be considered a failure to exhaust all administrative remedies and will not prevent an otherwise final decision from becoming final for purposes of such judicial review. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, or relief, when provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

SDCL § 34-20B-11. Criteria for inclusion of substance in Schedule I.

To be included within Schedule I, a substance shall have:

- (1) A high potential for abuse;
- (2) No accepted medical use in the United States; and
- (3) A lack of accepted safety for use under medical supervision.

SDCL § 34-20B-27. Recommendations for addition, deletion, or rescheduling of scheduled substances.

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.

Exhibits:

Exhibit A – SDCL Chapter 34-20G Excerpts – Evidence of Accepted Medical Use As A Matter Of Law

Exhibit B – South Dakota Medical Cannabis Licensing Materials – Evidence of Accepted Medical Use

Exhibit C – Physician Certification Forms – Evidence of Recognized Medical Use

Exhibit D – South Dakota Department of Health Program Documentation – Evidence of State Recognition of Accepted Medical Use

Exhibit E – Rescheduling Executive Order By President Donald J. Trump

Exhibit F – 2023 HHS Ruling

Exhibit G – Emerging Federal Standards for “Currently Accepted Medical Use” Under the Controlled Substances Act