

351—12.8(17A,68B) Refusal to issue order.

12.8(1) *For good cause.* The board shall refuse to issue a declaratory order for good cause. Good cause includes, but is not limited to, the following reasons:

- a.* The petition does not substantially comply with the required form.
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c.* The board does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case proceeding, or other agency or judicial proceeding that may resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

12.8(2) *Rationale.* A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition. Once the board declines to issue a declaratory order, or if the petition is deemed denied because an order was not entered within 60 days, a party to the proceeding may either seek judicial review or await further board action with respect to its petition.

12.8(3) *Amended filing.* Refusal to issue a declaratory order does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.