

661—401.209(17A) Refusal to issue order.

401.209(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for 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, or other agency or judicial proceeding that may definitively 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 an agency 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, intervened separately, 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.
- k.* The petition relates to any criminal investigation.
- l.* The petition concerns any procedure or practice of the board or any other agency related to initiation or conduct of criminal investigations or referral of matters for possible criminal investigation or prosecution.
- m.* The petition states facts and circumstances which are theoretical in nature to the extent that issuance of a declaratory order is unlikely to assist in guiding future conduct or the petitioner is neither a person with interest in the operation of the system nor a representative of such a person. “Representative of such a person” includes any organization with members or participants who are active or retired members of the system, or family members or survivors of active or retired members of the system.

401.209(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal, unless the refusal pertains to a matter under criminal investigation, or which has been referred for possible criminal prosecution, in which event no information which might compromise the investigation or prosecution shall be released to the petitioner or any intervenor. A refusal to issue a declaratory order constitutes final agency action on the petition.

401.209(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.