

**199—4.9(17A) Refusal to issue order.**

**4.9(1) Grounds.** The board shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. 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.
3. The board does not have jurisdiction over the questions presented in the petition.
4. 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.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. 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.
9. 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 the petitioner.

**4.9(2) Content and effect of refusal.** The board's refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

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