

FILED

SEP 09 1999

SHARON PRIEST
SECRETARY OF STATE

01-00-0008—DECLARATORY ORDER

- A. Scope-When a regulation, statute or order enforced by the Board of Pharmacy or its application will injure or threatens to injure a person in his person, business, or property, that person may file a petition for a declaratory order as to the applicability of that regulation, statute or order pursuant to this regulation.
- B. Petition-Contents-The Petition for a declaratory order shall contain the following:
 1. The venue, a heading specifying the subject matter and name of the petitioner and the name of the pleading;
 2. The name, address and telephone number of the petitioner and whether petitioner is licensed by the Board under A.C.A. §17-92-101 *et seq.*;
 3. The name, address, and telephone number of petitioner's attorney, if any;
 4. A statement of the injury to result from the regulation, statute or order or the application thereof to the petitioner;
 5. The declaratory ruling that Petitioner seeks;
 6. The regulation, statute or order which is the subject of the petition;
 7. The facts relevant to the order which Petitioner seeks; said statement of facts shall be complete, specific and particularized to the issue presented;
 8. Memorandum of law and legal authorities in support of he order Petitioner seeks;
 9. The name, address and telephone number of each person known to petitioner who may have a specific personal interest in the application of the regulation, statute or order or who may be adversely affected by the declaratory order sought by petitioner;
 10. The signature of Petitioner or Petitioner's attorney, if any; and
 11. All documents pertinent to the petition shall be attached thereto.
- C. Filing of the Petition.
 1. The original and three copies of each petition shall be in writing and shall be delivered in person or by mail to the Executive Director of the Board during regular business hours at the Board's offices. The Executive Director shall mark said

petition as having been received by the Board and return a file-marked copy to petitioner.

2. Petitioner shall serve a copy of the petition, by certified mail—return receipt requested, upon each person identified in said petition—pursuant to paragraph B (9) above; any person served with such notice may file with the Board, within 20 days after service thereof, a memorandum of law and legal authorities supporting such person's interest in such proceeding;

D. Consideration of Petition.

1. The Board will determine whether to issue a declaratory order. Should the Board determine not to issue a declaratory order, the Board will promptly notify petitioner and state the reasons therefore.
2. In order to determine whether to issue a declaratory order, the Board will consider any pertinent issues including, without limitation, the following:
 - a. whether the Petition substantially conforms to paragraph b above or is not supported by a memorandum of law in support of the petition;
 - b. whether the Petition is frivolous;
 - c. whether the matter is within the jurisdiction of the Board;
 - d. whether there is a genuine controversy of material fact, the resolution of which is necessary before any declaratory order may issue;
 - e. whether the order will terminate a controversy or remove uncertainties as to the applicability to petitioner of any regulation, statute or order by the Board;
 - f. whether the petition involves any subject, question or issue which the subject of a formal or informal matter or investigation currently pending before the Board, a court or other agency of this state or the federal government;
 - g. whether the petition seeks a ruling on a moot or hypothetical question, speculative facts or will result in an advisory ruling or opinion;
 - h. whether the issue presented is of such complexity that the Board has had insufficient opportunity or resources to develop a fully matured opinion;
 - i. whether a declaratory order would provide a broad interpretation of a regulation, statute or order applicable to an entire class of persons;

- j. whether the promulgation of a regulation or an adjudication would be more appropriate to resolved the question; and
- k. any other pertinent matter.

E. Parties

1. Petitioner, persons identified in paragraph B (9) and the Board shall be parties to a proceeding for a declaratory order.
2. Any other person may seek leave of the Board to intervene in such proceeding and leave to intervene will be granted at the sole discretion of the Board.
3. A petition to intervene shall be filed in the manner as set forth the same matters as required by paragraph b herein. Any reference to "Petitioner" herein also refers to any person who has been granted leave to intervene, unless the context clearly indicates to the contrary.

F. Disposition of Petition.

The Board may:

1. Decide the issue solely upon the facts presented in the petition; in such case the decision will apply only to the extent of the facts presented in the petition and amended tot he petition;
2. Require that additional information be submitted before the petition will be considered; in such event the additional facts will be considered as an amendment to the petition;
3. Require Petitioner to provide notice of the pendency of the proceeding to persons who may be necessary parties and as well as other persons;
4. Schedule a time, date and place at which the Board will conduct a hearing on the Petition for the purpose of obtaining additional facts or inquiring into any facts set forth in the petition; notice of the hearing and purpose therefore shall be provided to Petitioner.
5. Schedule a date, time and place at which Petitioner and other persons may make an oral presentation on the petition;
6. Consider the petition and any attachments without oral presentation; and/or

G. Order

1. The Board shall state its decision in writing signed by the President of or other person designated by the Board.
2. The Board's decision deciding the issue presented by the petition shall include findings of fact and conclusions of law supporting the declaratory order; the decision may be in the form of a letter or pleading.

3. The Board's decision shall be rendered and entered as promptly as reasonably practicable considering the facts, circumstances, complexity and other factors pertinent to the proceeding.
4. The order shall be served upon Petitioner and any other parties to the proceeding by certified mail, return receipt requested. (Adopted 8/19/99)