

CHAPTER VIII

DECLARATORY ORDERS

General Authority C.R.S. 24-4-105(11)
3 CCR 716-1

1. STATEMENT OF BASIS AND PURPOSE

These rules are adopted pursuant to C.R.S. 24-4-105(11) in order to provide for a procedure for entertaining requests for declaratory orders to terminate controversies or to remove uncertainties with regard to the applicability of statutory provisions or rules or orders of the Nursing Board to persons defined in the rules.

2. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order to the Board.
3. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such decision. Any of the following grounds, among others, may be sufficient reason to refuse to entertain a petition:
 - 3.1 Failure to comply with Rule 3 of this chapter.
 - 3.2 A ruling on the petition will not terminate the controversy nor remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.
 - 3.3 The petition involves any subject, question or issue which is the subject of, or is involved in, a matter (including a hearing, investigation or complaint) currently pending before the Board, particularly, but not limited to, any such matter directly involving the petitioner.
 - 3.4 The petition seeks a ruling on a moot or hypothetical question, or will result in an advisory ruling or opinion, having no direct applicability to petitioner.
 - 3.5 Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order in question.
4. Any petition filed pursuant to this rule shall set forth the following:
 - 4.1 The name and address of the petitioner; whether the petitioner is licensed by the Board as an R.N. or L.P.N. or L.P.T., or employs such licensees.
 - 4.2 The statute, rule or order to which the petition relates.
 - 4.3 A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner. Petitioner may also include a concise statement of the legal authorities upon which petitioner relies.
 - 4.4 A concise statement of the specific declaratory order sought by petitioner.
5. If the Board determines that it will rule on the petition, the following procedures shall apply:
 - 5.1 The Board may rule upon the petition without holding an evidentiary hearing. In such a case:

- A. Any ruling of the Board will apply only to the extent of the facts presented in the petition and in any clarifying information submitted in writing to the Board.
- B. The Board may order the petitioner to file a written clarification of factual matters, a written brief, memorandum or statement of position.
- C. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
- D. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
- E. The Board may take administrative notice of commonly known facts within its expertise or contained in its records and consider such facts in its disposition of the petition.
- F. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

5.2 The Board may, in its discretion, set the petition for an evidentiary hearing, conducted in conformance with C.R.S. 24-4-105, upon due notice to petitioner, for the purpose of obtaining additional facts of information or to determine the truth of any facts set forth in the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires to consider.

6. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by Rule 3 of this chapter. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

Adopted: November 21, 1996