

## **21 NCAC 18B .0109      DECLARATORY RULING PROCEDURES**

- (a) All requests for declaratory rulings shall be written and mailed to the Board at the Board's address.
- (b) Each request for a declaratory ruling must include the following information:
- (1) the name and address of the person requesting the ruling;
  - (2) the statute or rule to which the request relates;
  - (3) a concise statement of the manner in which the requesting person is aggrieved by the rule or statute or its potential application to him; and
  - (4) a statement whether an oral hearing is desired and, if so, the reason therefor.
- (c) Upon receipt of a request for a declaratory ruling, the Board shall determine whether a ruling is appropriate under the facts stated.
- (d) The Board shall proceed to issue a declaratory ruling when the person requesting the ruling shows that, with regard to the facts presented:
- (1) the rule or statute in question is unclear on its face;
  - (2) circumstances are so changed since the adoption of a rule that a declaratory ruling is warranted;
  - (3) the factors specified in the request were not given appropriate consideration by the Board at the time the rule was adopted;
  - (4) the rule or statute is unclear in its application to the requesting person's facts; or
  - (5) a fair question exists regarding the validity of the rule because of:
    - (A) an absence of Authority for the Board's adoption of the rule; or
    - (B) irregularities in the Board's rule-making proceedings.
- (e) When the Board determines for good cause that the issuance of a declaratory ruling is undesirable, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request. The Board will ordinarily decline to issue a declaratory ruling when:
- (1) there has been a similar controlling factual determination made by the Board;
  - (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule; or
  - (3) the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.
- (f) Prior to issuing a declaratory ruling, the Board may give notice of the declaratory proceedings to any persons it deems appropriate and may direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted by the Board. The proceedings may consist of written submissions, an oral hearing, or other appropriate procedures.
- (g) If the Board finds evidence that the factors listed in Subdivisions (d)(1), (2), or (3) of this Rule exist or potentially exist beyond the specific facts presented in a particular petition for declaratory ruling, the Board shall consider rule-making proceedings on the rule.
- (h) A record of each declaratory ruling and the procedures conducted therefor will be maintained by the Board at least until:
- (1) the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
  - (2) the Board prospectively changes the declaratory ruling for good reason;
  - (3) any court sets aside the ruling in litigation between the Board and the party requesting the ruling; or
  - (4) any court of the Appellate Division of the General Court of Justice construes the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.
- (i) The record will contain:
- (1) the request for a declaratory ruling;
  - (2) all written submissions filed in the request, whether filed by the person requesting the ruling or by any other person;
  - (3) a record or summary of oral presentations, if any; and
  - (4) a copy of the declaratory ruling.

*History Note:*      *Authority G.S. 87-42; 150B-4;*  
*Eff. October 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*  
*2016.*