

10.32.[16]06 Petition for Declaratory Ruling

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" ~~[means the State Board of Physicians]~~ *has the meaning stated in Health Occupations, § 14-101, Annotated Code of Maryland.*

(2) "Designee" means a person or committee to whom the Board has delegated responsibility for consideration of a petition.

(3) "Person" means[:

~~(a) An individual;~~

~~(b) An agency;~~

~~(c) An association;~~

~~(d) A corporation; or~~

~~(e) Any other entity.]~~ *an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.*

.02 Petition.

A. An interested person may file with the Board a petition for a declaratory ruling with respect to the manner in which the Board would apply:

(1) A statute;

(2) A regulation; or

(3) An order which the Board enforces to a particular case based on the facts presented in the petition.

B. The Board may delegate responsibility for consideration of the petition. The delegation may be limited to the:

(1) Study of a request; and

(2) Preparation of a proposed ruling for the Board's consideration.

C. Petition for Declaratory Ruling.

(1) The petition for a declaratory ruling shall be filed in writing on a form provided by the Board.

(2) The petition shall contain a statement describing in detail:

(a) The interest of the petitioner in making the request;

(b) The issue involved;

(c) A statement of the facts; and

(d) A listing of documents or statements, or both, to be considered.

(3) Unless this requirement is waived in writing by the Board, the petition shall contain a sworn statement by the petitioner that the facts contained in the petition are true to the best of the person's knowledge and belief.

D. Granting of Petition.

(1) Not later than 60 days from receipt of the petition, the Board shall inform the petitioner whether the petition will be granted.

(2) If the petition is denied, the Board shall inform the petitioner in writing of the reasons for the denial.

(3) If the petition is granted, the Board or the Board's designee shall inform the petitioner when to expect the declaratory ruling.

.03 Consideration and Disposition.

A. Consideration.

(1) A petition will be granted whenever the Board or the Board's designee considers issuing a declaratory ruling advisable under the circumstances.

(2) In rendering its ruling, the Board or the Board's designee:

(a) Shall consider all materials submitted with the petition;

(b) May consider any document, data, or other relevant material;

(c) May consult individuals;

(d) May consider comments from the staff; and

(e) May require argument of the question or permit the introduction of evidence by the petitioner or, in the Board's sole discretion, by other persons.

(3) Consideration of the proposed rulings prepared by the Board's designee shall be conducted according to procedures adopted by the Board in each case.

B. Disposition.

(1) A declaratory ruling issued shall be in writing, stating the:

(a) Issue;

(b) Conclusion;

(c) Facts on which the conclusion was based; and

(d) Sources relied upon.

(2) A declaratory ruling issued by the Board shall plainly state that it is a declaratory ruling pursuant to this chapter.

(3) A written answer from the Board or any employee or committee of the Board to an inquiry is not a declaratory ruling unless made in conformity with this chapter.

C. Publication and Inspection.

(1) The Board shall keep a record of each declaratory ruling issued and index all declaratory rulings issued by reference to the statute or regulation involved.

(2) The Board may publish declaratory rulings of general interest subject to the mandates of State Government Article, Title 10, Subtitle 6, Part III, Annotated Code of Maryland, and allow inspection of the declaratory rulings subject to that statute.

D. Denial. A petition may be denied if the:

(1) Request contains incomplete information on which to base an informed declaratory ruling;

(2) Board or the Board's designee concludes that a declaratory ruling cannot reasonably be given on the matter;

(3) Matter is adequately covered by a:

(a) Regulation,

(b) Declaratory ruling,

(c) Decision, or

(d) Legal opinion;

(4) Matter is the subject of a pending disciplinary proceeding; or

(5) The Board or the Board's designee concludes that a ruling would not be in the public interest.

.04 Effect, Revision, and Appeal.

A. Effect. A declaratory ruling shall be binding on the Board and the petitioner on the statement of facts covered in the declaratory ruling.

B. Application for Revision.

(1) The petitioner shall file an application for revision within 10 days after the issuance of the declaratory ruling.

(2) The Board shall determine whether to reopen the declaratory ruling.

(3) The Board may summarily deny an application for revision.

(4) An application for revision does not stay the effect of the declaratory ruling. If the Board determines to grant the application and reopen the declaratory ruling, the declaratory ruling is stayed until the Board:

(a) Issues a revised declaratory ruling;

(b) Withdraws the declaratory ruling; or

(c) Withdraws its determination to reopen.

(5) A timely filed application for revision extends the time for judicial appeal of the declaratory ruling until the Board:

(a) Denies the application;

(b) Issues a revised declaratory ruling;

(c) Withdraws the declaratory ruling; or

(d) Withdraws its determination to reopen.

(6) If the Board determines to reopen the declaratory ruling, the Board shall give the applicant notice of the determination and of any subsequent changes to the declaratory ruling. The determination to reopen a declaratory ruling does not confer any procedural rights on the applicant.

(7) The Board shall deny applications for revision which contain additional or revised facts. The Board may treat the application as a request for a new declaratory ruling.

(8) After determining to reopen a declaratory ruling, the Board may take any action which it is authorized to take with respect to original applications for declaratory rulings.

(9) The Board's determination as to whether to reopen the declaratory ruling shall be made within 60 days of the application for revision.

C. Revision on Board's Motion.

(1) The Board may reopen a declaratory ruling on its own motion at any time 2 years or more after a declaratory ruling's issuance.

(2) The declaratory ruling may be reopened if the Board determines that there have been subsequent changes in law, technology, economic or business conditions, or environment that render the declaratory ruling inaccurate or obsolete.

(3) The Board shall give notice to the petitioner of the Board's decision to reopen a declaratory ruling.

(4) Before a declaratory ruling is finally modified under this section, the Board shall give the petitioner the opportunity to submit written and oral argument to the Board.

D. Appeal. A declaratory ruling is subject to review as provided in State Government Article, §10-305, Annotated Code of Maryland.