

Melanie S. Griffin, Secretary

Ron DeSantis, Governor

August 7, 2023
Board of Accountancy
Department of Business and Professional Regulations
<https://meet.goto.com/380908629>

[Notice](#)

Monday August 7, 2023

10:00 a.m. Call to Order William Blend
Roll Call and Quorum Roger Scarborough

1. DOAH Case 22-2870 (Kevin Pillion v. DBPR)
 - a. Administrative Law Judge's Recommended Order
 - b. Petitioner's Exception to Recommended Order
 - c. DOAH Notices and Orders
 - d. Transcripts
 - e. Respondent's Exhibits
 - f. Petitioner's Exhibits

2. Public Comments

3. Future Meetings

September 7 th PC	Orlando, FL
September 8 th BD	Orlando, FL
October 25 th PC	GoToMeeting
October 27 th BD	Orlando, FL
December 14 th PC	Orlando, FL
December 15 th BD	Orlando, FL

4. Adjourn

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Please Note: The Board of Accountancy may hear agenda items out of order rather than as presented on the agenda



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RON DESANTIS
GOVERNOR
ASHLEY MOODY
ATTORNEY GENERAL
JIMMY PATRONIS
CHIEF FINANCIAL OFFICER
WILTON SIMPSON
COMMISSIONER OF AGRICULTURE

May 10, 2023

Roger Scarborough, Director
240 Northwest 76th Drive, Suite A
Gainesville, Florida 32607
(eServed)

Re: KEVIN PILLION vs. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY, DOAH Case No. 22-2870

Dear Mr. Scarborough:

The Recommended Order has been transmitted in electronic format to the registered eALJ users in the referenced case. The one-volume Transcript, along with the Petitioner's Exhibits numbered 1-11 and the Respondent's Exhibits numbered 1-7 are electronically accessible via the Exhibits/Transcript portal. The parties agree that Respondent's Exhibit 6—i.e., Petitioner's tax return documents—contains confidential information and, thus, should remain confidential in this and all subsequent proceedings. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

ANDREW D. MANKO
Administrative Law Judge

ADM/pb

Enclosures

cc: Dwight Oneal Slater, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

Roger Scarborough, Director
DOAH Case No. 22-2870
May 10, 2023
Page 2

Kara Aikens, Esquire
(eServed)

Joseph 'Jake' Whealdon, General Counsel
(eServed)

Melanie S. Griffin, Secretary
(eServed)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

RECOMMENDED ORDER

Andrew D. Manko, Administrative Law Judge of the Division of Administrative Hearings (“DOAH”), presided over the final hearing in this matter under sections 120.569 and 120.57(1), Florida Statutes (2022), on November 30, 2022, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Dwight O. Slater, Esquire
 Guilday Law, P.A.
 1983 Centre Pointe Blvd, Suite 200
 Tallahassee, Florida 32308

For Respondent: Rachelle R. Munson, Esquire
 Kara Aikens, Esquire
 Office of the Attorney General
 Plaza Level-01, The Capitol
 Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner, Kevin Pillion, meets the eligibility requirements for reinstatement of his certified public accountant (“CPA”) license under section

473.313, Florida Statutes, as alleged in the Petition for Formal Administrative Hearing.

PRELIMINARY STATEMENT

On July 28, 2021, Respondent, Florida Department of Business and Professional Regulation (“Department”), Board of Accountancy (“Board”), issued an Amended Notice of Intent to Deny Petitioner’s application for reinstatement of his CPA license under section 473.313(5). Petitioner filed a Petition for Formal Administrative Hearing in which he maintained that the Department should have reinstated his license based on his good faith effort to comply with section 473.313 and requested a formal administrative hearing. On September 14, 2022, the Department transmitted the case to DOAH to conduct an evidentiary hearing under chapter 120.¹

The final hearing occurred on November 30, 2022. Petitioner testified on his own behalf and presented the testimony of three witnesses via deposition: (1) Catherine Csaky, a former employee; (2) Katherine Best, Ph.D., a psychologist that diagnosed and treated Petitioner over five visits between February 2019 and September 2021; and (3) Shannon Feinroth, a current employee. The Department presented the testimony of Roger Scarborough, its director of the Division of Certified Public Accounting.

Petitioner’s Exhibits 1 through 10 were admitted in evidence without objection. Petitioner’s Exhibit 11—*i.e.*, certificates of continuing education

¹ The Department initially transmitted the Amended Notice of Intent to Deny and Petition for Formal Administrative Hearing to DOAH in 2021, which was docketed as Case No. 21-2573 and assigned to Judge Quimby-Pennock. On October 25, 2021, Judge Quimby-Pennock issued an Order closing her file and relinquishing jurisdiction for the Board to consider a tentative settlement reached by the parties. After the Board disapproved the settlement, the Department filed an Amended Referral for Hearing and Motion to Reopen on September 14, 2022, which was docketed as DOAH Case No. 22-2870 and assigned to the undersigned.

courses—was admitted in evidence over the Department’s objection to any certificates that did not include Petitioner’s name. Respondent’s Exhibits 1 through 7 were admitted in evidence without objection. The parties agree that Respondent’s Exhibit 6—*i.e.*, Petitioner’s tax return documents—contains confidential information and, thus, should remain confidential in this and all subsequent proceedings.

A one-volume Transcript of the proceedings was filed on February 7, 2023. After receiving one 15-day extension of time and a one-day extension of time to file proposed recommended orders (“PROs”), the Department timely filed its PRO on March 7, 2023. Petitioner did not electronically file his PRO until after 5:00 p.m., on March 7, 2023, so it was not docketed until March 8, 2023. On March 9, 2023, over the Department’s objection, the undersigned granted Petitioner’s request to accept his PRO as timely. Although Petitioner’s counsel confirmed that he did not review the Department’s PRO prior to filing his own, the undersigned gave the Department 11 days to file a response to Petitioner’s PRO, which it did on March 20, 2023. The undersigned duly considered both PROs and the Department’s Response to Petitioner’s PRO in preparing this Recommended Order.

In making the findings below, the undersigned only considered hearsay evidence that supplemented or explained other evidence or would be admissible over objection in civil actions. § 120.57(1)(c), Fla. Stat.

FINDINGS OF FACT

1. The Department is the state agency responsible for regulating CPAs under chapter 473.

2. Petitioner is both a CPA and an attorney. He earned his bachelor’s degree in accounting in 1983 and became a practicing CPA in Pennsylvania in 1986. He earned his law degree in 1990 and became a practicing attorney

in Pennsylvania that same year. Petitioner thereafter actively practiced for almost 15 years as both a CPA and an estate planning and securities attorney in Pennsylvania and Washington, D.C.

3. From 2004 through 2007, Petitioner was not actively practicing as a CPA or an attorney because he was in Florida caring for his aging parents who were suffering from dementia. In 2008, Petitioner moved to Florida permanently after his parents passed away.

4. In 2009, Petitioner became licensed as a CPA in Florida. That same year, Petitioner also passed the Florida Bar examination and became licensed as an attorney in this state.

5. Since 2010, Petitioner has managed his own law firm specializing in six subspecialties of elder law, including estate, life care, trust, and public benefits planning. His firm employs four paralegals and another lawyer, all of whom help him manage a successful law practice. Petitioner is a self-proclaimed perfectionist who works seven days per week. As a result of his work ethic and the assistance of his team, Petitioner earns three to four times more than average elder law attorneys. Indeed, his law firm reported annual gross revenues averaging about \$800,000 between 2015 and 2020.

6. Since 2010, Petitioner has maintained an active license to practice law in Florida. This means that he timely filed all annual paperwork, paid his annual dues, and completed his required continuing legal education (“CLE”) courses as required by the Florida Bar.

7. Petitioner uses his experience as a CPA in his law practice, but he has not actively practiced as a CPA since 2010. But, he has attempted to maintain his CPA license because he believes it helps him with his law practice; it also is required to be an active member of certain professional organizations, such as the Florida Institute of CPAs of which he was an active member and served in leadership positions between 2010 and 2013.

8. Although Petitioner timely renewed his CPA license in 2014, he failed to do so prior to his license expiring at the end of 2015. As a result, his license reverted to delinquent status as of January 1, 2016. However, he quickly filed the necessary paperwork, and his CPA license was reactivated and renewed for two more years on January 17, 2016.

9. Petitioner again failed to timely file his renewal application before his CPA license expired at the end of 2017, so it reverted to delinquent status on January 1, 2018. Unlike with the previous delinquency, Petitioner did not file the necessary paperwork to reactivate and renew his CPA license. Instead, his license remained delinquent for two years, at which point it became null and void on January 1, 2020. Notwithstanding the current null and void status, Petitioner's CPA license has never been subject to discipline.

10. On April 12, 2021, over three years after his CPA license was due to be renewed and over 15 months after it became null and void, Petitioner submitted a letter ("hardship letter") requesting the Board to reinstate his license under section 473.313(5). The statute gives the Board discretion to reinstate a null and void license if the CPA made a good faith effort to comply with the renewal requirements but failed to do so because of illness or unusual hardship.

11. In his hardship letter, Petitioner divulged that he suffers from generalized anxiety disorder ("GAD") that has been exacerbated since 2015 by the following factors: his nephew's suicide; financial worries of operating a solo practitioner law firm; anxiety of studying for and taking the examination to become a certified elder law attorney ("CELA"); stress of turnover at his law firm; and depression relating to the COVID-19 pandemic. Petitioner noted that his GAD combined with these experiences resulted in anxiety-related procrastination, which hindered him from following through and managing personal and business tasks.

12. That said, Petitioner's hardship letter did not explain what good faith efforts he made to comply with the licensure requirements. For instance, he

failed to include information as to the number of continuing professional education (“CPE”) hours he completed; he also failed to articulate whether and to what extent he paid any required fees or attempted to timely complete the required renewal and/or reactivation applications.

13. The Board considered Petitioner’s request at public meetings held on May 14 and June 18, 2021. Petitioner attended the second meeting at which he was asked if he wished to explain what good faith efforts he took to comply with the licensure requirements. In response, Petitioner referred the Board members back to his hardship letter and never offered any explanation as to what good faith effort he made to comply. The Board members reviewed the statutory criteria and acknowledged that a two-prong test applied: (1) a good faith effort to comply; and (2) a hardship that prevented full compliance. The Board members discussed the information provided by Petitioner and ultimately rejected the request for reinstatement by a vote of five to three.

14. On July 22, 2021, the Board issued an Amended Notice of Intent to Deny Petitioner’s request for reinstatement. The Board acknowledged that Petitioner presented information regarding the illness and hardship prong of the test. However, it confirmed that the denial was based on Petitioner’s failure to establish a good faith effort to comply with the licensure requirements as required by section 473.313(5).

15. Petitioner disputed the Board’s decision by timely filing a Petition for Formal Administrative Hearing. Therein, he argued that he sufficiently demonstrated a good faith effort to comply with section 473.313, but he was unable to do so based on illness or unusual hardship.

16. At the final hearing, both parties presented evidence as to the efforts that Petitioner made to comply with the statutory licensing requirements. It is undisputed that Petitioner never took steps to timely prepare his renewal application in 2017 or his reactivation application in 2019; he also never paid the required fees associated with the renewal or reactivation applications.

Rather, Petitioner's efforts to comply with the licensing statutes consisted solely of completing some of the required CPE hours.

17. Both parties presented evidence concerning the CPE requirements and how many hours Petitioner completed since 2016. CPAs are required to complete 80 CPE hours during each two-year reestablishment period, which follows the State's fiscal year beginning on July 1st. Thus, if a license is due to be renewed on January 1, 2018, the reestablishment period for purposes of CPE hours runs from July 1, 2015, through June 30, 2017. If a license becomes delinquent, CPAs are required to complete 120 CPE hours during the 24 months before the filing date of their reactivation application. And, if a license becomes null and void, CPAs are required to complete an additional 120 CPE hours to have the license reinstated.

18. Because Petitioner's license was up for renewal on January 1, 2018, he had to have completed 80 CPE hours during the preceding two-year reestablishment period, which ran from July 1, 2015, through June 30, 2017. Based on the weight of the credible evidence, Petitioner completed four CPE hours during that reestablishment period.

19. After Petitioner's license became delinquent for failing to timely apply for renewal on January 1, 2018, Petitioner had to apply to reactivate his license on or before December 31, 2019, and complete 120 CPE hours during the preceding 24-month period. Based on the weight of the credible evidence, Petitioner completed only ten CPE hours during the 24 months preceding the date the application to reactivate his delinquent license was due.

20. When Petitioner's license became null and void on January 1, 2020, he had to complete an additional 120 CPE hours to reinstate his license. Based on the weight of the credible evidence, Petitioner completed five CPE hours in 2020 and, upon learning that his license had become null and void in early

2021, he completed an additional 198 CPE hours between January 20, 2021, and February 25, 2021.²

21. Petitioner also presented credible testimony about his long-term history of anxiety and how it affects his personal and professional life. He described experiencing the following symptoms on a daily basis: frequent urination; negative thought processes and fear; profuse sweating; nausea; decreased ability to concentrate; and significant procrastination.

22. In early 2019, Petitioner scheduled an assessment with Katherine Best, Ph.D., a psychologist. He did so because he had decided to take an examination to become nationally certified in elder law, began to have anxiety about it, and wanted to obtain testing accommodations.

23. Dr. Best conducted an assessment and met with Petitioner on three more occasions in early 2019. She diagnosed Petitioner with heightened auditory sensitivity and GAD, which are chronic conditions from which she believed he has likely suffered his entire life. She described GAD as an illness causing chronic stress, hypervigilance, and physiological symptoms, which can lead to forgetfulness and procrastination due to the obsessive need for perfection.

24. Based on her assessment, Dr. Best submitted a letter requesting testing accommodations for the examination, which Petitioner received. After the four appointments in early 2019, Petitioner did not see Dr. Best again until September 2021 when he requested that she provide a letter to support the request for reinstatement at issue in this case.

25. Petitioner testified that he is riddled with anxiety every day, which is exacerbated when other stressful things happen in his life. Consistent with his hardship letter, Petitioner explained how his anxiety worsened between

² Petitioner introduced a CPE reporting form for the period of September 10, 2019, through February 4, 2021, reflecting two CPE hours in 2019, five CPE hours in 2020, and 123 CPE hours between January 20, 2021, and February 4, 2021. Petitioner also introduced certificates for courses he completed between February 4 and February 25, 2021, including an additional 75 CPE hours.

2015 and 2020 as a result of several stress-inducing issues: (1) his nephew, with whom he had a close relationship, committed suicide in 2016; (2) financial worries arising from managing his law firm, particularly after he decided to open a second law office in 2019; (3) cash flow concerns arising from debt on multiple properties that he owns, including a horse ranch that he purchased in 2016 or 2017, which he manages with assistance from his paralegal; (4) anxiety arising from his decision to sit for the examination to obtain his national certification as an elder law attorney in early 2019; (5) turnover of paralegals and support staff at his law firm between 2015 and 2017, on whom he relied tremendously to assist in managing his law practice; and (5) depression relating to the COVID-19 pandemic.

26. However, Petitioner offered little explanation for how these issues contributed to his failure to maintain his CPA license, except that his anxiety caused him to procrastinate and precluded him from getting things done. Yet, during the same period of time, Petitioner was able to maintain his law license, including completing his 33 hours of CLEs every three years, paying his annual renewal fees, and completing the annual paperwork. He also was able to complete 198 CPE hours in just a month by paying a flat rate to one provider of CPE credits, which allowed him to take as many credits as he wanted within that period of time.

27. Based on the weight of the credible evidence, Petitioner failed to establish that he made a good faith effort to comply with the statutory requirements. It is undisputed that Petitioner took no steps between 2017 and 2020 to complete the requisite applications or pay the required fees to have his license renewed in 2017 or reactivated in 2019. Indeed, Petitioner did not even learn about the status of his license until March 2021—over three years after his renewal was due and over 14 months since his license became null and void after sitting in delinquent status for two years. Petitioner also completed only four of the required 80 CPE hours (five percent) to renew his license by the end of 2017, and he completed only ten of

the required 120 CPE hours (eight percent) to reactive his license by the end of 2019. Petitioner's actions do not constitute a good faith effort to comply with the requirements to reactivate his delinquent license prior to it becoming null and void.

28. Regardless, even if Petitioner established a good faith effort to comply with the license requirements, the weight of the credible evidence failed to establish that his failure to timely renew and reactivate his license resulted from his GAD or hardships. There is no dispute that Petitioner suffers from GAD and that he had several anxiety-inducing experiences that resulted in additional anxiety and depression since 2015. But, despite his GAD and the hardships he faced, Petitioner was able to manage a successful, busy law firm and complete all of the requirements to annually renew his law license.

29. It also cannot be ignored that a substantial portion of the increased anxiety that Petitioner experienced between 2015 and 2020 resulted from his choices to engage in anxiety-inducing activities. He purchased a horse farm and also opened a second office for his law firm, both of which increased his anxiety and stress about cash flow and finances. He also chose to take the elder law certification examination, which he knew from prior experience would exacerbate his already-high anxiety and stress levels.

30. At the end of the day, the weight of the credible evidence shows that Petitioner was capable of meeting the requirements to reactivate his CPA license despite his GAD and the hardships he suffered. He understandably chose to prioritize his practice as a lawyer as that was his primary source of income. But, by doing so, he allowed his CPA license to fall so far to the backburner that he simply forgot about maintaining it. Indeed, it remained delinquent for two years and null and void for another 14 months before he thought to check on the status. The weight of the credible evidence simply does not support a finding that Petitioner's failure to maintain his CPA license was caused by an illness or unusual hardship.

CONCLUSIONS OF LAW

31. DOAH has jurisdiction over the subject matter and parties hereto under sections 120.569 and 120.57(1).

32. Petitioner seeks to have his license as a CPA reinstated under section 473.313(5).

33. As the applicant, Petitioner must establish by a preponderance of the evidence that he is entitled to have his license reinstated. “[A] ‘preponderance’ of the evidence is defined as ‘the greater weight of the evidence,’ *Black’s Law Dictionary* 1201 (7th ed. 1999), or evidence that ‘more likely than not’ tends to prove a certain proposition.” *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014) (quoting *Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000)).

34. CPAs must renew their licenses every two years. *See* § 473.305, Fla. Stat. (providing for biennial renewal fees); § 473.311(2), Fla. Stat. (authorizing the Department to adopt rules establishing the procedure for the biennial renewal of licenses); § 473.312, Fla. Stat. (requiring applicants for renewal to complete certain continuing education requirements during the two-year period preceding renewal).

35. Section 455.271(5), Florida Statutes, requires licensees, including accountants, to timely apply for renewal before the license expires. “Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.” *Id.* Florida Administrative Code Rule 61H1-30.020(1) is in accord and provides as follows:

(1) Failure of a licensee to renew the license before the license expires, pursuant to Section 455.271(5), F.S., shall cause the license to become delinquent immediately following expiration of the most current licensure cycle. Pursuant to Rule 61H1-33.006, F.A.C.:

- (a) A license becomes delinquent when the licensee fails to renew and pay the applicable renewal fee by the deadline of December 31 of any renewal cycle.
- (b) Licensees who pay renewal fees after March 15, in addition to incurring a penalty fee, are required to submit a request to the Department to reactivate the license.

36. If a delinquent licensee fails to either become active or take inactive status under section 473.313 before the expiration of the next two-year renewal cycle, his or her delinquent license automatically becomes null and void. *See* § 455.271(6), Fla. Stat. (“Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department.”); Fla. Admin. Code R. 61H1-30.030(1) (“A license that remains in a delinquent status for two years, pursuant to Section 455.271(6), F.S., automatically becomes null and void.”).

37. Once a license becomes null and void, it can only be reinstated under the requirements in section 473.313(5), which provides as follows:

Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

Thus, the Board has discretion to reinstate a null and void license if the CPA:

(1) establishes that he or she has made a good faith effort to comply with

statutory requirements for renewal but failed to do so because of illness or unusual hardship; (2) pays all applicable fees; and (3) completes all required CPE hours. § 473.313(5), Fla. Stat.; *Accord* Fla. Admin. Code R. 61H1-30.030(2) (“A null and void license is only eligible for a change of status, pursuant to the reinstatement terms set forth in Section 473.313(5), F.S.”).

38. As authorized in section 473.313(5), the Board adopted rule 61H1-30.030 to set forth the requirements for reinstating a null and void license. First, the CPA must file an application on an approved form that includes “a personal statement regarding the cause and circumstances resulting in the null and void license.” Fla. Admin. Code R. 61H1-30.030(3)(a).

39. Second, the CPA must pay all applicable fees. Fla. Admin. Code R. 61H1-30.030(3)(b). This includes the following: (1) a renewal fee of \$105.00, Fla. Admin. Code R. 61H1-31.003; (2) a delinquency fee of \$25.00, Fla. Admin. Code R. 61H1-31.004; and (3) a reinstatement fee of \$250.00. Fla. Admin. Code R. 61H1-31.015. Therefore, a CPA seeking to reinstate a license that became null and void after being delinquent for the prior two-year renewal period must pay \$380.00 in fees.

40. Third, the CPA must complete all CPE requirements prior to the reinstatement of the license. Fla. Admin. Code R. 61H1-30.030(3)(c). As outlined in rule 61H1-30.030(4), the CPA must provide proof of completion of the following CPE hours:

- (a) 120 CPE hours for the reinstatement of the null and void license to delinquent status, consisting of 30 hours in accounting and auditing, 8 hours in board approved ethics, and no more than 30 hours in behavioral subjects; and

- (b) 120 CPE hours for the reactivation from the delinquent status to current active status, consisting of 30 hours in accounting and auditing, 8 hours in board approved ethics, and no more than 30 hours in behavioral subjects.

Thus, in addition to completing 120 CPE hours to reinstate the null and void license to delinquent status, CPAs also must complete 120 hours to reactivate the delinquent license. *See* Fla. Admin. Code. R. 61H1-31.015 (“The completion of the requirements of Rule 61H1-33.006, F.A.C. shall be required for reinstatement.”); Fla. Admin. Code. R. 61H1-33.006(3) and (4) (requiring CPAs seeking to reactivate a delinquent license to complete 120 CPE hours, including at least 30 hours in accounting and auditing, eight hours in board approved ethics, and no more than 30 hours in behavioral subjects, “no more than 24 months immediately prior to the date of the application for reactivation”).

41. Based on the Findings of Fact above, Petitioner failed to establish by a preponderance of the evidence that he made a good faith effort to comply with statutory requirements for renewal but failed to do so because of illness or unusual hardship. Petitioner’s completion of ten of the requisite 120 CPE hours during the 24-month period before his license became null and void does not constitute a good faith effort to comply, particularly where he took no steps to submit the requisite paperwork or associated fees.

42. Petitioner argues that section 473.313(5) fails to specify what constitutes good faith efforts and that the Board’s witness also could not articulate a clear standard as to what a sufficient amount of CPE hours would be. However, section 473.313(5) gives the Board broad discretion to determine in a given case what constitutes a good faith effort. Indeed, Petitioner is seeking grace from the Board to reinstate his license that he allowed to sit as delinquent for two years and as null and void for another 15 months. Regardless, the undersigned has no hesitation in finding that Petitioner’s completion of just ten of the required 120 CPE hours to reactivate his license—without taking any other steps to submit the required applications or filing fees—does not constitute a good faith effort to comply with the licensure requirements.

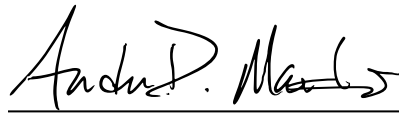
43. Petitioner also offered credible testimony as to how his GAD adversely impacts his daily life and how his difficult life experiences over the last number of years exacerbated his anxiety. That said, Petitioner was able to—despite his illness and hardships—maintain his license to practice law in Florida, including timely filing his annual renewal forms, paying his dues, and completing all required CLE hours, while also managing and expanding a successful, solo practitioner law firm. The weight of the credible evidence does not support a finding that Petitioner failed to comply with the requirements to renew his CPA license as a result of his illness or hardship.

44. Lastly, Petitioner's reliance on *John Charles Count, Jr. v. Board of Professional Surveyors & Mappers*, Case No. 07-5789 (DOAH Aug. 14, 2008; DBPR Nov. 12, 2008), is misguided because the facts at issue there were distinguishable. Unlike Petitioner, the applicant in *Count* did not maintain other professional licenses or successfully run a business during the same period of time despite his illness. Indeed, the credible evidence there confirmed that the surveyor's illness directly undermined his ability to not only work as a surveyor but also to travel to and attend the CPE courses required to maintain his license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Accountancy enter a final order denying Petitioner's application for reinstatement.

DONE AND ENTERED this 10th day of May, 2023, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of May, 2023.

COPIES FURNISHED:

Dwight Oneal Slater, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

Kara Aikens, Esquire
(eServed)

Roger Scarborough, Director
(eServed)

Joseph 'Jake' Whealdon, General Counsel
(eServed)

Melanie S. Griffin, Secretary
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PUBLIC ACCOUNTANCY

KEVIN PILLION,

PETITIONER,

v.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY,

RESPONDENT.

CASE No.: 22-2870

PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

COMES NOW Petitioner, Kevin Pillion, by and through the undersigned, and files the following exceptions to the Recommended Order rendered on May 10, 2023, and states:

Introduction

This matter presented a relatively new issue for the Board, specifically, a situation in which the claimed hardship was a mental disability, not a physical disability. The result of the relatively novel nature of this case resulted in an injustice perpetrated by the Board and validated by the Administrative Law Judge ("ALJ").

That is not to suggest in any way that either the Board or the ALJ acted with malice or any intentional animus. Rather, this injustice stems from an unconscious bias held by the vast majority of society. As a people, we do not regard mental illness with the same level of respect, or ascribe to it the same level of

severity, as we do with physical ailments. I have no doubt that neither this Board, nor the ALJ, would have hesitated to reinstate Mr. Pillion's license had he been in a coma for two years. No one would have argued with the severity of such an illness or its impact on one's ability to negotiate life. However, here, where Mr. Pillion's illness is more akin to a mental "coma," being able to conclude that it was sufficiently serious to prevent him from complying with the licensure requirements was, understandably, more difficult.

The result is that Mr. Pillion has lost his CPA license—a license he has continuously held since 1986.¹ Everyone agrees that Mr. Pillion suffered from a mental disability and that he experienced unusual hardship; but, apparently only a few considered these facts to be serious enough to have prevented him from completing the licensure requirements. For these reasons, as explained in greater detail below, the Board should correct this injustice and reinstate Mr. Pillion's CPA license.

Exception # 1

1. Petitioner takes exception to the Findings of Fact in Paragraph 12 on pages 5 and 6 of the Recommended Order, which state:

That said, Petitioner's hardship letter did not explain what good faith efforts he made to comply with the licensure requirements. For instance, he failed to include information as to the number of continuing professional education ("CPE") hours he completed; he also failed to articulate whether and to what extent he paid any required fees or attempted to timely complete the required renewal and/or reactivation applications.

¹ Mr. Pillion became a practicing CPA in Pennsylvania in 1986; he became licensed by endorsement in Florida in 2009.

This finding is not supported by competent substantial evidence or the law. Florida Administrative Code Rule 61H1-30.030(3)(a)–(c) outlines what an applicant must do to request reinstatement of a null and void license. It provides that an applicant for reinstatement must complete the Application for Reinstatement of Null and Void License and include with the application “a personal statement regarding the cause and circumstances resulting in the null and void license,” pay the applicable fees, and “[c]omplete the continuing professional education (CPE) as referenced in subsection (3) of this rule”—though the applicant need not provide proof of CPE completion prior to board review of the application.

The undisputed evidence shows that Petitioner did, in fact, complete and file the Application for Reinstatement of Null and Void License, include a personal statement regarding the cause and circumstances resulting in the null and void license, pay the applicable fees, and complete the required CPE credits. *See* (Petitioner’s Exhibits 5, 10, and 11).

Nowhere in the rule does it state the applicant is required to “explain what good faith efforts he made to comply with the licensure requirements” or “articulate whether and to what extent he paid any required fees or attempted to timely complete the required renewal and/or reactivation applications” as found by the ALJ. So, contrary to the ALJ’s findings, Petitioner did not “fail” to explain his good faith efforts or “fail” to articulate whether he paid the fees or completed the applications. Thus, competent substantial evidence does not support the Findings of Fact in Paragraph 12 of the Recommended Order. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

The evidence presented shows that Petitioner complied with Florida Administrative Code Rule 61H1-30.030(3)(a)–(c): he completed and filed the required Application for Reinstatement of Null and Void License, provided a personal statement explaining the circumstances resulting in the null and void license, paid the applicable fees, and completed the required CPE credits.

2. Petitioner takes exception to the Findings of Fact in Paragraph 13 on page 6 of the Recommended Order, which state, in part:

The Board considered Petitioner's request at public meetings held on May 14 and June 18, 2021. Petitioner attended the second meeting at which he was asked if he wished to explain what good faith efforts he took to comply with the licensure requirements. In response, Petitioner referred the Board members back to his hardship letter and never offered any explanation as to what good faith effort he made to comply. [***]

This finding is not supported by competent substantial evidence or the law. At the beginning of the June meeting, Board members asked Mr. Pillion whether there was "anything [he'd] like to share with the Board," at which time Mr. Pillion referred the Board to his hardship letter. At no point did Board members ask Mr. Pillion to explain what good faith efforts he took to comply with the licensure requirements.

The first motion made was to approve the application based on Mr. Pillion's significant hardship preventing him from being able to comply with the licensure requirements. That motion failed five to three. Thereafter, the Board ended the hearing, and Mr. Pillion disconnected from the call. A few minutes later, the Board took up the case again, without Mr. Pillion, and considered another motion, this time to deny the application for reinstatement based on Mr. Pillion's

failure to make a good faith effort. Mr. Pillion was not present for this discussion and, thus, could not participate. Therefore, competent substantial evidence does not support the Findings of Fact in Paragraph 13 of the Recommended Order. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

During the June hearing, the Board never asked Mr. Pillion what good faith efforts he made to comply with the licensure requirements. However, the evidence presented during the formal administrative hearing established that Mr. Pillion did, in fact, complete some, but not all, of the CPE requirements during the relevant time period.

See (Petitioner's Amended Composite Exhibit 11).

3. Petitioner takes exception to the Findings of Fact in Paragraph 26 on page 9 of the Recommended Order, which state, in part:

However, Petitioner offered little explanation for how these issues contributed to his failure to maintain his CPA license, except that his anxiety caused him to procrastinate and precluded him from getting things done.
[***]

This finding is not supported by competent substantial evidence. Petitioner presented significant evidence as to how the stated issues contributed to his failure to maintain his CPA license. See (Petitioner's Exhibits 1, 3, 7, 8, and 9). Indeed, the evidence and argument established several facts about Generalized Anxiety Disorder ("GAD").

According to the National Institute of Mental Health:

Occasional anxiety is a normal part of life. Many people may worry about things such as health, money, or fam-

ily problems. But people with GAD feel extremely worried or nervous more frequently about these and other things—even when there is little or no reason to worry about them. GAD usually involves a persistent feeling of anxiety or dread that interferes with how you live your life. It is not the same as occasionally worrying about things or experiencing anxiety due to stressful life events. People living with GAD experience frequent anxiety for months, if not years.

National Institute of Mental Health; <https://www.nimh.nih.gov/health/publications/generalized-anxiety-disorder-gad> (last visited March 5, 2023).

Generally, symptoms of GAD include “heightened auditory sensitivity that results in increased distractibility (e.g. shuffling of paper, tapping of foot or pen, or hearing another coughing); an urge to urinate frequently; heart racing and palms sweating; difficulty concentrating and pervasive feelings of worry.” (Pet. Ex. 3). “This type of symptomatology can easily lead to forgetfulness and procrastination due to obsessive need for perfection.” (Pet. Ex. 3; Pet. Ex. 8, 35).

Procrastination is often a large component of GAD. According to Dr. Best, “people procrastinate because they want it to be perfect, or they don’t want to deal with it, but it’s anxiety provoking.” (Pet. Ex. 8, 37). Tasks frequently get “backburnered,” and whatever provoked the anxiety takes center stage. (Pet. Ex. 8, 37).

GAD is considered to be an “impairment” under the Americans with Disabilities Act [“ADA”] because “mental impairment means . . . [a]ny mental or psychological disorder,” and can qualify as a disability under the ADA depending on the severity of the symptoms and their impact on the person’s life. *See Equal*

Emp. Opportunity Comm’n v. Phoebe Putney Mem. Hosp., Inc., 488 F. Supp. 3d 1336, 1349 (M.D. Ga. 2020).

While Dr. Best classified Petitioner as “functioning,” she made clear that sufferers of GAD can experience spikes in their level of anxiety under certain circumstances like testing or social encounters. (Pet. Ex. 8, 32). People with GAD are not able to easily compartmentalize anxiety-inducing circumstances and, as a result, they often cannot set stressful matters aside in order to attend to and complete other tasks. (Pet. Ex. 8, 37). This is especially true for people like Petitioner who also present with obsessive compulsive tendencies. (Pet. Ex. 8, 21–22, 37).

The findings in Paragraph 26 suggest that GAD causing procrastination and resulting in tasks getting “backburnered” does not explain Mr. Pillion’s failure to comply with the licensure requirements. Procrastination and the “backburnering” of tasks literally explains why Mr. Pillion failed to maintain his license. Thus, competent substantial evidence does not support the Findings of Fact in Paragraph 26 of the Recommended Order. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

Petitioner’s GAD caused him to procrastinate on completing the CPA licensure requirements and resulted in their being placed on the “back burner,” thus precluding him from getting them done.

4. Petitioner takes exception to the Findings of Fact in Paragraph 27 on page 9 and 10 of the Recommended Order, which state, in part:

Based on the weight of the credible evidence, Petitioner failed to establish that he made a good faith effort to comply with the statutory requirements.

[***]

Petitioner's actions do not constitute a good faith effort to comply with the requirements to reactivate his delinquent license prior to it becoming null and void.

This finding is not supported by competent substantial evidence. It is premised on the biased belief that, unlike a coma, a mental disorder cannot prevent a person from making a good-faith effort. This simply is not true. Furthermore, during the hearing, Director Scarborough testified that a licensee would have to demonstrate that he or she completed "some" CPE credits in order to show that he or she made a good-faith effort. The undisputed evidence showed that Mr. Pillion did, in fact, complete "some" CPE credits during the relevant time period. See (T2, 80) ("Q: For the following biennium, July 1, 2017, to June 30, 2019, how many did petitioner's certification represent as completed? A: Ten."); (T2, 127) (Q: "Ms. Munson showed you a diagram where you indicated – or which showed that Mr. Pillion did, in fact, do some CPEs during the relevant period? A: Yes. Yes.").

In any event, it is unclear that the Legislature had this type of quantitative standard in mind when it wrote the words "good faith effort." Black's Law Dictionary defines "good faith" as "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." Good Faith, *Black's Law Dictionary* (11th ed. 2019). There was no evidence presented, or even a suggestion, that Mr. Pillion's state of mind did not consist of "honesty in belief

or purpose,” or that he had any intent to defraud or seek unconscionable advantage. In fact, the only evidence of Petitioner’s state of mind established the precise opposite. See (T2. 131–32) (“I had no intent to fraud [sic], you’re correct, And it’s not out of malice. It’s because of the illness that I couldn’t concentrate and focus on that with everything going on in my world.”). See also (Pet. Ex. 7, 55–56) (“And I also know that he’s sincere and he’s remorseful when he says this was not intentional. The fact that he let his license lapse is not because he did not deem it important enough to do what he has to do to keep it active. It was because of the constant state of anxiety that he’s in. It was not intentional on his part.”).

Thus, competent substantial evidence does not support the Findings of Fact in Paragraph 27 of the Recommended Order. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

Based on the weight of the credible evidence, Petitioner established that he made a good-faith effort to comply with the statutory requirements. The evidence demonstrated that he completed “some” CPE credits during the relevant time frame, and that his state of mind did consist of “honesty in belief or purpose,” and he had no intent to defraud or seek unconscionable advantage.

5. Petitioner takes exception to the Findings of Fact in Paragraph 28 on page 10 of the Recommended Order, which state, in part:

Regardless, even if Petitioner established a good faith effort to comply with the licensure requirements, the weight of the credible evidence failed to establish that his failure to timely renew and reactivate his license resulted from his GAD or hardships.

[***]

But, despite his GAD and the hardships he faced, Petitioner was able to manage a successful, busy law firm and complete all the requirements to annually renew his law license.

These findings are not supported by competent substantial evidence. The evidence presented showed that Mr. Pillion was only able to maintain his law license with significant assistance from his staff. *See* (T2. 21–22). In any event, being able to accomplish a task in one area of life does not automatically mean that one should be able to accomplish a task in a different area. In other words, it is not inconsistent to maintain a law license while being unable to maintain a CPA license. In fact, it is entirely consistent with GAD. As shown above, people with GAD are not able to easily compartmentalize anxiety-inducing circumstances and, as a result, they often cannot set stressful matters aside in order to attend to and complete other tasks. (Pet. Ex. 8, 37). This is especially true for people like Petitioner who also present with obsessive compulsive tendencies. (Pet. Ex. 8, 21–22, 37). If anything, having to maintain a law license is but one more stressor experienced by Mr. Pillion that caused him to neglect his CPA license.

Thus, competent substantial evidence does not support the Findings of Fact in Paragraph 28 of the Recommended Order. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

The weight of the credible evidence established that Petitioner's failure to maintain his CPA license resulted from his GAD and hardships.

6. Petitioner takes exception to the Findings of Fact in Paragraph 29 on page 10 of the Recommended Order, which state, in part:

[**] The weight of the credible evidence simply does not support a finding that Petitioner's failure to maintain his CPA license was caused by an illness or unusual hardship.

For all the reasons and facts articulated above, particularly in the exceptions to Paragraphs 26, 27, and 28 of the Recommended Order, this finding is not supported by competent substantial evidence. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

The weight of the credible evidence established that Petitioner's failure to maintain his CPA license resulted from his GAD and hardships.

7. Petitioner takes exception to Findings of Fact and Conclusions of Law in Paragraph 41 on page 14 of the Recommended Order, which state, in part:

Based on the Findings of Fact above, Petitioner failed to establish by a preponderance of the evidence that he made a good faith effort to comply with statutory requirements for renewal but failed to do so because of illness or unusual hardship.

For all the reasons and facts articulated above, particularly in the exceptions to Paragraphs 26, 27, and 28 of the Recommended Order, this finding is not supported by competent substantial evidence. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

The weight of the credible evidence established that Petitioner's failure to maintain his CPA license resulted from his GAD and hardships.

8. Petitioner takes exception to Conclusions of Law in Paragraph 42 on page 15 of the Recommended Order, which state:

Petitioner argues that section 473.313(5) fails to specify what constitutes good faith efforts and that the Board's witness also could not articulate a clear standard as to what a sufficient amount of CPE hours would be. However, section 473.313(5) gives the Board broad discretion to determine in a given case what constitutes a good faith effort. Indeed, Petitioner is seeking grace from the Board to reinstate a license that he allowed to sit as delinquent for two years and as null and void for another 15 months. Regardless, the undersigned has no hesitation in finding that Petitioner's completion of just ten of the required 120 CPE hours to reactivate his license—without taking any other steps to submit the required applications or filing fees—does not constitute a good faith effort to comply with the licensure requirements.

These Conclusions of Law do not comport with the decisional law of the courts of this state. The Florida Supreme Court held in *Dep't of State, Div. of Elections v. Martin*, 916 So. 2d 763 (Fla. 2005):

In other words, statutes granting power to the executive branch “must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”

Id. at 770. In *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 28 (Fla. 1st DCA 2008), the First District was asked to determine the constitutionality of a statute that empowered the Board of Pharmacy to “establish by rule the requirements for reapplication by applicants whose licenses have been permanently revoked. The requirements may include, but are not limited to, satisfying current requirements for an initial license.” *Id.* at 30. The First District held:

By providing the Board with the discretion to enact re-application rules, the legislature has impermissibly given an administrative agency the authority to declare what the law shall be, as the Board alone may decide whether an entire group of formerly licensed professionals shall be permitted to reapply. *Cf. Sims*, 754 So. 2d at 669–70 (finding law was not unconstitutional because it clearly fixed the penalty to be imposed, delegating only the details of carrying out the execution to the department). Further, section 456.072(6) provides no standards or guidelines regarding when the Board should exercise its discretion to establish re-application rules.

Id. Here, the statute in question impermissibly gives the Board unbridled discretion and provides no standards or guidelines regarding when the Board should exercise its discretion. The Board has adopted no rules to establish what constitutes a good-faith effort; to date, the standard that has been articulated is that the applicant show that he or she completed “some” CPE requirements. However, as shown in this case, even that standard is subject to the whims of the Board.

Florida law does not countenance the delegation of “unbridled authority” to state agencies or boards. Because no number of hours, and no guidance as to how the Board should evaluate good-faith efforts, have been adopted in rule form, the method employed by the Board smacks of arbitrariness. How many hours constitute a good-faith effort? The best answer Mr. Scarborough could offer was “some.” This comes extremely close to the very definition of arbitrary. *See Arbitrary*, *Black’s Law Dictionary* (11th ed. 2019) (“Depending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures.”).

Section 120.57(1)(e)(1), Florida Statutes, provides: “An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.” That is precisely what the ALJ did in this case. Accordingly, the Board should reject the Conclusions of Law in Paragraph 42 of the Recommended Order and replace them with the following:

While section 473.313(5) gives the Board a measure of discretion in these matters, the Board has not reduced any guidance to rule. To date, the only standard that has been applied is that the applicant must show that he or she completed “some” CPE credits. Here, Mr. Pillion has established that he completed “some” CPE credits; thus, he has demonstrated by a preponderance of the evidence that he made a good faith effort to comply with the statutory requirements under this Board’s precedent.

9. Petitioner takes exception to Findings of Fact and Conclusions of Law in Paragraph 43 on page 15 of the Recommended Order, which state, in part:

[***] The weight of the credible evidence does not support a finding that Petitioner failed to comply with the requirements to renew his CPA license as a result of his illness or hardship.

For all the reasons and facts articulated above, particularly in the exceptions to Paragraphs 26, 27, and 28 of the Recommended Order, this finding is not supported by competent substantial evidence. Accordingly, the Board should reject these Findings of Fact and replace them with the following:

The weight of the credible evidence established that Petitioner’s failure to maintain his CPA license resulted from his GAD and hardships.

Conclusion

To sum up, the undisputed evidence established that Mr. Pillion suffers from GAD, a debilitating condition recognized as a disability under the ADA, and that his GAD and myriad unusual circumstances prevented him from completing the requirements to maintain his CPA license. Even though he suffers from GAD, Mr. Pillion did manage to complete “some” CPE credits. Under the circumstances, and under the only standard articulated by the Board, these credits constitute a good-faith effort. But, even if Mr. Pillion had not completed any CPE credits, the evidence established that his GAD prevented him from doing so. Holding otherwise is essentially embracing the unconscious bias we all have with respect to mental illness.

As anyone who has suffered from a mental disorder can attest, they can be just as debilitating, if not more so, than many physical ailments. A person who suffers from severe clinical depression may be able to put on a “good face” while at work, but their home life might be in shambles. Just because a person can make things work in one aspect of his or her life, does not mean that they ought to be able to do so in all other aspects as well. Mental illness is real and it causes real hardships. This Board should recognize this reality and reject the ALJ’s findings of fact and conclusions of law.

Respectfully submitted,

/s/ [Dwight O. Slater]
Dwight O. Slater
Florida Bar No.: 30607
Guilday Law, P.A.
1983 Centre Pointe Blvd., S-200
Tallahassee, FL 32308

P: (850) 224-7091
F: (850) 222-2593
dwight@guildaylaw.com
tessa@guildaylaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-filing with Agency Clerk Ronda L. Bryan, Department of Business and Professional Regulation, 2601 Blair Stone Rd., Tallahassee, FL 32399, at AGC.Filing@myfloridalicense.com; via facsimile to the Division of Certified Public Accounting, 240 NW 76th Dr., Suite A, Gainesville, FL 32607, at (352) 333-2508; and via email to Counsel for Respondent, Rachelle R. Munson, Esq., at m.munson@myfloridalegal.com, and Kara Aikens, Esq., at kara.aikens@myfloridalegal.com, on this 25th day of May, 2023.

/s/ [Dwight O. Slater]
Dwight O. Slater
Counsel for Petitioner

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

DOAH CASE NO.: 21-2573

**DEPARTMENT OF BUSINESSS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**

Respondent.

**AMENDED
REFERRAL FOR HEARING AND MOTION TO REOPEN**

COME NOW the Respondent and Petitioner (hereinafter collectively referred to as the “Parties”), by and through the undersigned counsel, pursuant to sections 120.569 and 120.57(1), Florida Statutes, and requests the Division of Administrative Hearings (“DOAH”) to assign an Administrative Law Judge for the purpose of hearing the disputed issues of fact arising from the Amended Notice of Intent to Deny (“Notice”), attached as Exhibit A. A copy of the Petition for Formal Administrative Hearing Involving Disputed Issues of Material Fact (“Petition”) is attached as Exhibit B.

The Board is the affected agency and is represented by the undersigned attorneys. Petitioner is represented by Dwight O. Slater, Esq., Dwight@guildaylaw.com, Florida Bar No. 30607, Guilday Law, P.A., 1983 Centre Pointe Blvd. Suite. 200, Tallahassee, Florida 32308, (850) 224-7091. Respondent files this Joint Motion to Reopen and states:

1. The Order Closing File and Relinquishing Jurisdiction, attached as Exhibit C, previously closed the file with leave to request the Division to re-open the case should the offered settlement be disapproved.
2. At the time of filing this motion, the Parties submit the following:
 - a. Related Cases. The Parties are not aware of any cases currently filed at DOAH that are related to this matter.
 - b. Estimated Length of Final Hearing. The Parties estimate that it will take one half day to conduct the final hearing.
 - c. Location of Final Hearing. The Parties suggest that the final hearing be held in person in Tallahassee, Florida.
 - d. Dates for Final Hearing. The Parties would like to waive the 70-day requirement and offer additional dates due to additional hearings scheduled during the same window. Parties would like to suggest the dates of October 3, 4, 5, 7 and November 4, 10, 21, 22, 23, 28, 30, 2022.
 - e. ADA Accommodation. The Parties are not aware of any need for an ADA accommodation by any participant to the hearing. However, to the extent the Parties become aware of such a need, the Parties will duly inform the Administrative Law Judge as appropriate.
 - f. As such, the Department would ask the Honorable Administrative Law Judge to consider the dates provided when scheduling the hearing in this matter.

WHEREFORE, the undersigned counsel for the Respondent respectfully requests this court to reopen the above matter.

Respectfully submitted this 14th day of September 2022.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, and Roger Scarborough, Executive Director, Division of Certified Public Accounting, 240 Northwest 76th Drive Ste-A, Gainesville, FL 32607; at roger.scarborough@myfloridalicense.com, on this 14th day of September 2022.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson

Rachelle Munson

Senior Assistant Attorney General

FL Bar No. 195243

Rachelle.Munson@myfloridalegal.com

Kara Aikens

Assistant Attorney General

FL Bar No. 1004405

Kara.Aikens@myfloridalegal.com

Office of the Attorney General

PL-01, The Capitol

Tallahassee, Florida 32399-1050

Telephone: (850) 414-3300

Fax: (850) 922-6425

Attorneys for Respondent

/s/ Dwight O. Slater

Dwight O. Slater

FL Bar No. 30607

Guilday Law, P.A.

1983 Centre Pointe Blvd., Ste-200

Tallahassee, FL 32308

Telephone: (850) 224-7091

Fax: (850) 222-2593

Dwight@guildaylaw.com

Attorney for Petitioner

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: THE APPLICATION FOR REINSTATEMENT OF NULL AND VOID LICENSE
KEVIN PILLION**

AMENDED NOTICE OF INTENT TO DENY

This matter came before the Florida Board of Accountancy ("Board") at a duly-noticed public meeting held on June 18, 2021, via telephone and video conference for consideration of the request to reinstate the null and void license of **Kevin Pillion** ("Applicant"). The Applicant was present but was not represented by legal counsel. The Board was represented by Rachelle Munson, Assistant Attorney General. Upon review of the application file and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

1. **Section 473.313(5), F.S.**, states in relevant part, "the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship".

2. The Applicant's license reverted to a delinquent status effective January 1, 2018, for non-compliance issues and for additional non-compliance, the license automatically reverted to null and void effective January 1, 2020. The Applicant requested on April 12, 2021, reinstatement of his null and void license.

3. The Applicant presented information regarding personal illness, including depression and anxiety, from 2015 to the time he requested reinstatement. He attributed the illness and anxiety in part to have resulted from the death of his nephew, financial and mental stress incurred by operating a solo practice, and the impact of the pandemic.

4. The Board acknowledged the hardship as identified by the Applicant; however, the

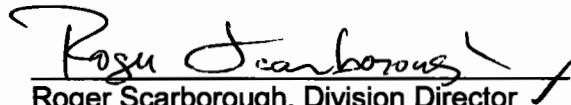
Board denied the request for reinstatement due to the Applicant's failure to establish "a good faith effort to comply" as required by Section 473.313(5), F.S.

It is therefore ORDERED that the Application for Reinstatement of Null and Void License of **KEVIN PILLION** is hereby **DENIED**.

This Notice shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 22nd day of July, 2021.

BOARD OF ACCOUNTANCY


Roger Scarborough, Division Director
Division of Certified Public Accounting

NOTICE OF HEARING RIGHTS

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Executive Director of the Board, 240 Northwest 76th Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of the material facts which are in dispute***. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to: **Kevin Pillion**, 1671 Mount Street, Sarasota, FL 34236; **Dwight O. Slater, Esq.**, Cohn Slater, P.A., 3689 Coolidge Ct., Unit 3, Tallahassee, FL 32311 and by electronic delivery to [dwight@cohnslater.com](mailto:dwright@cohnslater.com); and to **Rachelle Munson**, Assistant Attorney General, Office of the Attorney General, at Rachelle.munson@myfloridalegal.com; this 28th day of July, 2021.

Brandon M. Nichols

STATE OF FLORIDA
BOARD OF ACCOUNTANCY

KEVIN P. PILLION,

PETITIONER,

V.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,

RESPONDENT.

CASE NO.:

PETITION FOR FORMAL ADMINISTRATIVE HEARING

COMES NOW Petitioner, Kevin P. Pillion, by and through the undersigned, and files this Petition for Formal Administrative Hearing in accordance with sections 120.569 and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 28-106.21, and states:

Parties

1. Petitioner is Kevin P. Pillion, of 1671 Mound Street, Sarasota, Florida 34236.
2. Petitioner's legal counsel is Attorney Dwight O. Slater of Cohn Slater, P.A., whose address and contact information are set forth below.
3. The Agency affected by this Petition is the Florida Department of Business and Professional Regulation, whose address is 2601 Blair Stone Road, Tallahassee, Florida 32399.

Notice

4. Petitioner was served with a copy of the Notice of Intent to Deny via Certified Mail.

Statement of Substantial Interests

5. Petitioner has standing to file this Petition because his substantial interests have been directly affected by the proposed agency action, specifically the denial of his application for reinstatement. This proposed sanction constitutes an injury in fact of sufficient immediacy and is of the type or nature that the requested proceeding is designed to protect.

Statement of Disputed Issues of Material Fact

6. Petitioner disputes the facts alleged in the Notice of Intent to Deny; specifically, Petitioner disputes that he failed to demonstrate that he meets the eligibility requirements for the licensure reactivation established by section 473.313(5), Florida Statutes.

Statement of Ultimate Facts & Statutory Support

7. Petitioner presented uncontroverted evidence that he made a good faith effort to comply with section 473.313, Florida Statutes, but was unable to due to illness or unusual hardship.

Statement of Relief Sought

8. Petitioner asks the Department to rescind its Notice of Intent to Deny and to instead grant Petitioner's application for reinstatement.

WHEREFORE Petitioner respectfully requests that this matter be forwarded to the Division of Administrative Hearings in accordance with sections

120.569 and 120.57(1), Florida Statutes, for assignment to an Administrative Law Judge for formal administrative proceedings.

Respectfully submitted,

/s/ [Dwight O. Slater]
Dwight O. Slater
Florida Bar No. 30607
Cohn Slater, P.A.
3689 Coolidge Ct., Unit 3
Tallahassee, FL 32311
(850) 329-0402
dwight@cohnslater.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing and the attached Election of Rights Form have been furnished via e-filing to Ronda L. Bryan, Agency Clerk, Florida Department of Business and Professional Regulation, 2601 Blair Stone Rd., Tallahassee, FL 32399, at AGC.Filing@myfloridalicense.com on this 15th day of July 2021.

/s/ [Dwight O. Slater]
Dwight O. Slater
Counsel for Petitioner

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 21-2573

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

ORDER CLOSING FILE AND RELINQUISHING JURISDICTION

This cause came before the undersigned on the Joint Motion for Continuance Pending Consideration of Settlement (“Motion”), filed October 22, 2021.¹ The Motion provides that “Petitioner has requested Respondent to consider an offer of settlement; however, the offer must first be presented to the Board of Accountancy (“Board”) for consideration and approval.” The Motion also provides that the Board does not meet until October 29, 2021, and a further Board meeting must be appropriately scheduled to consider a “full review of the settlement offer.”

This matter was referred to the Division of Administrative Hearings (“Division”) on August 26, 2021. The Notice of Hearing by Zoom Conference and Order of Pre-hearing Instructions were issued on September 7, 2021. Additionally, Respondent, the Board, had engaged in discovery as noted on the Division’s docket.

Section 120.569(2)(a) Florida Statutes, provides in pertinent part:

...The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1).

As such, the undersigned finds that the Motion is a request for relinquishment of jurisdiction, such that the settlement offer may be considered by the Board. The undersigned being fully advised, it is, therefore,

¹ A “joint motion” should include the signature of each party or each party’s representative.

ORDERED that:

1. The final hearing scheduled for November 3, 2021, is canceled.
2. Jurisdiction is relinquished to the Board within the Department of Business and Professional Regulation.
3. The file of the Division of Administrative Hearings ("Division") is closed with leave to request the Division to re-open the case, should the offered settlement agreement be disapproved by the Board within the Department of Business and Professional Regulation.

DONE AND ORDERED this 25th day of October, 2021, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Rachelle R. Munson, Esquire
Office of the Attorney General,
Administrative Law Bureau
Administrative Law Bureau
PL-01, The Capitol
Tallahassee, Florida 32399

Dwight Oneal Slater, Esquire
Guilday Law, P.A.
1983 Centre Pointe Blvd, Suite 200
Tallahassee, Florida 32308

Robert Antonie Milne, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

NOTICE OF HEARING

A hearing will be held in this case at the Division of Administrative Hearings, (check with the security guard for hearing room assignment), 1230 Apalachee Parkway, Tallahassee, Florida, **on November 30, 2022, at 9:00 a.m.**, Eastern Time, or as soon thereafter as can be heard. Continuances will be granted only by order of the Administrative Law Judge for good cause shown.

ISSUE: Whether Petitioner meets the eligibility requirements for license reactivation under section 473.313, Florida Statutes, as alleged in the Petition for Formal Administrative Hearing.

AUTHORITY: Chapter 120, Florida Statutes; and Florida Administrative Code Chapter 28-106, Parts I and II.

FILING PLEADINGS, OTHER PAPERS, AND EVIDENCE: The Division of Administrative Hearings (“DOAH”) accepts electronic filing of pleadings, other papers, and proposed evidence through its eALJ system. **Counsel and qualified representatives must register to e-file through eALJ.** Registration is available at <https://www.doah.state.fl.us/eALJ/Registration.aspx>. Information concerning e-filing pleadings and/or exhibits through eALJ is available at <https://www.doah.state.fl.us/eALJSupport/FilingExhibits/story.html>.

Parties must submit their proposed exhibits and a notice of filing the proposed exhibits at least seven days before the hearing, **on or before November 23, 2022.** Counsel and qualified representatives must electronically file their proposed exhibits and notice of filing same through eALJ. The proposed exhibits will not be considered unless they are admitted into evidence during the final hearing.

The documents filed with DOAH must be provided to all other parties. It is the filer’s responsibility to remove all confidential information from

the documents, such as social security numbers, bank account numbers, and other information exempt from public records.

The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Administrative Law Judge upon request of the parties. Registered e-filers shall request subpoenas through eALJ. All parties have the right to present oral argument and to cross-examine opposing witnesses. All parties have the right to be represented by counsel or other qualified representative, in accordance with Florida Administrative Code Rule 28-106.106. Failure to appear at this hearing may be grounds for closure of the file without further proceedings.

The agency shall be responsible for preserving the testimony at the final hearing. Fla. Admin. Code R. 28-106.214.

September 21, 2022



ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Robert Antonie Milne, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

Dwight Oneal Slater, Esquire
(eServed)

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Judge's assistant no later than ten days prior to the hearing. The Judge's assistant may be contacted at (850) 488-9675, via 800-955-8771 (TTY), 800-955-1339 (ASCII), 800-955-8770 (Voice), or 844-463-9710 (Spanish) Florida Relay Service.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

ORDER OF PRE-HEARING INSTRUCTIONS

This cause having been scheduled for final hearing, it is, therefore,

ORDERED that:

1. Counsel for all parties shall meet no later than 15 days prior to the date for final hearing in this cause and shall:

- (a) Discuss the possibility of settlement;
- (b) Stipulate to as many facts and issues as possible;
- (c) Prepare the pre-hearing stipulation as required by this Order;
- (d) Examine all exhibits (except for impeachment exhibits) proposed to be offered into evidence at the hearing;
- (e) Furnish opposing counsel the names and addresses of all witnesses (except for impeachment witnesses); and
- (f) Complete all other matters which may expedite the hearing in this case.

2. Counsel for Petitioner shall initiate arrangements for the attorneys' conferences. However, all attorneys in this cause are charged with the duty of meeting in such conferences and of complying with the schedule set forth in this Order.

3. The pre-hearing stipulation shall contain:

- (a) A concise statement of the nature of the controversy;
- (b) A brief, general statement of each party's position;
- (c) A list of all exhibits (except for impeachment exhibits) to be offered at the hearing, noting any objections thereto, and the grounds for each objection;
- (d) A list of the names and addresses of all witnesses (except for impeachment witnesses) to be called at the hearing by each party, with expert witnesses being so designated;
- (e) A concise statement of those facts which are admitted and will require no proof at hearing, together with any reservations directed to such admission;
- (f) A concise statement of those issues of law on which there is agreement;
- (g) A concise statement of those issues of fact which remain to be litigated;
- (h) A concise statement of those issues of law which remain for determination by the Administrative Law Judge;
- (i) A concise statement of any disagreement as to the application of the rules of evidence;
- (j) A list of all pending motions or other matters which require action by the Administrative Law Judge;
- (k) An estimate as to the length of time required for the hearing; and
- (l) The signature of counsel for all parties.

4. The parties shall file their pre-hearing stipulation no later than 10 days prior to the date set for final hearing in this cause. If for any reason the pre-hearing stipulation cannot be executed by all counsel, each attorney shall file and serve a separate proposed pre-hearing statement no later than 7 days before the final hearing with a statement of reasons why no agreement was reached on the stipulation. Failure to comply with the requirements of this Order may result in the exclusion of witnesses or exhibits not previously disclosed.

5. If a party desires entry of an order establishing a discovery schedule, including discovery deadlines, it may file a motion seeking entry of such an order. The motion

should contain a proposed schedule for conducting discovery, preferably proposed with input of all parties to this proceeding.

6. The parties are reminded that consultation with all parties is required before filing a motion and that every motion shall include all parties' positions concerning same, as provided in Florida Administrative Code Rule 28-106.204(3).

DONE AND ORDERED this 21st day of September, 2022, in Tallahassee, Leon County, Florida.

A handwritten signature in black ink, appearing to read "Andrew D. Manko", written over a horizontal line.

ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Robert Antonie Milne, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

Dwight Oneal Slater, Esquire
(eServed)

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

DOAH CASE NO.: 22-2870

**DEPARTMENT OF BUSINESSS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**

Respondent.

_____ /

NOTICE OF SUBSTITUTION OF COUNSEL

Notice of Kara Aikens, Esq., hereby entering her Appearance as co-counsel for the Department of Business and Professional Regulation for the Board of Accountancy in the above-named case, in substitution and requesting removal of Mr. Robert Milne, Esq. as co-counsel in this case. It is respectfully requested that all further pleadings, motions, memoranda, orders of Court and other documents filed or served in this cause be sent to undersigned counsel at the addresses set forth below.

Respectfully submitted this 27th day of September 2022.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 27th day of September 2022.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson

Rachelle Munson
Senior Assistant Attorney General
FL Bar No. 195243
Rachelle.Munson@myfloridalegal.com

/s/ Kara Aikens

Kara Aikens
Assistant Attorney General
FL Bar No. 1004405
Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

/s/ Dwight O. Slater

Dwight O. Slater
FL Bar No. 30607
Guilday Law, P.A.
1983 Centre Pointe Blvd., Ste-200
Tallahassee, FL 32308
Telephone: (850) 224-7091
Fax: (850) 222-2593
Dwight@guildaylaw.com

Attorney for Petitioner

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,
Petitioner,

v.

DOAH Case No.: 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**
Respondent.

JOINT PRE-HEARING STATEMENT

I. STATEMENT OF THE NATURE OF THE CONTROVERSY:

1. Whether Mr. Pillion made a good faith effort to comply with licensure renewal requirements in accordance with the provision of section 473.313(5), Florida Statutes.
2. Whether Mr. Pillion failed to comply with licensure renewal requirements due to illness or unusual hardship in accordance with the provision of section 473.313(5), Florida Statutes.
3. Whether Mr. Pillion's certified public accountant license should be reinstated in accordance with the "illness or unusual hardship" provision of section 473.313(5), Florida Statutes.

II. POSITIONS:

Petitioner

1. Petitioner contends that he made a good faith effort to comply with the applicable licensure provisions but was prevented from doing so due to illness and unusual hardship. Accordingly, the Board of Accountancy should have granted his application to reinstate his certified public accountant license in accordance with section 473.313(5), Florida Statutes.

Respondent

1. Mr. Pillion did not make a good faith effort to comply with licensure renewal and has not demonstrated any illness or unusual hardship that would have prevented him from

complying with licensure renewal requirements in accordance with section 473.313(5), F.S.

III. EXHIBITS:

Petitioner

1. Affidavit on Behalf of Kevin Pillion and attachments.
2. February 15, 2019, letter from Dr. Katherine Best to National Elder Law Foundation re: Petitioner and Exam Accommodation Request.
3. September 15, 2021, letter from Dr. Katherine Best to Board of Accountancy re: Petitioner's GAD diagnosis.
4. Clinical Records of Dr. Katherine Best re: Petitioner.
5. April 8, 2021, letter from Petitioner to the Board of Accountancy re: Illness and Hardship.
6. Recording of the Board of Accountancy's May 2021 Board Meeting.
7. Recording of the Board of Accountancy's June 2021 Board Meeting.
8. Transcript of Deposition of Catherine Csaky; October 5, 2021
9. Transcript of Deposition of Katherine Best; October 20, 2021
10. Transcript of Deposition of Shannon Feinroth; October 20, 2021
11. Petitioner's Application for Reinstatement of Null and Void License
12. Composite Exhibit of Petitioner's certificates of attendance for continuing professional education (CPE) courses

Respondent

1. Original Florida CPA License Application (Licensure by Endorsement)
2. Application for Reinstatement of Null & Void License
3. Composite Exhibit of Petitioner's certificates of attendance for CPE courses known to the Department of Business and Professional Regulation (Department) from January 2016 through April 2021.
4. Petitioner's tax documents from the period of 2015 to 2020.
5. Respondent's Notice of Intent to Deny dated June 28, 2021.

6. Respondent's Amended Notice of Intent to Deny dated July 28, 2021.

IV. WITNESSES:

Petitioner

1. Mr. Kevin Pillion
2. Catherine Csaky – If deposition transcript is not introduced in lieu of testimony.
3. Dr. Katherine Best - If deposition transcript is not introduced in lieu of testimony.
4. Shannon Feinroth - If deposition transcript is not introduced in lieu of testimony.

Respondent

1. Roger Scarborough, Executive Director, Board of Accountancy, Department of Business and Professional Regulation, 240 NW 76th Drive, Suite A, Gainesville, FL 32607
2. Any witness called by Mr. Pillion.

V. STIPULATED FACTS:

1. Date license initially issued.
2. Date license reverted to delinquent status January 1, 2016.
3. Date license renewed/reactivated January 17, 2016.
4. Date license expired December 31, 2017.
5. Date license reverted to delinquent status January 1, 2018.
6. Date license became null and void January 1, 2020.
7. Date Board Office received Petitioner's application to reactivate null and void license April 12, 2021.
8. Financials and CPEs have been properly authenticated.

VI. STIPULATED ISSUES OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this case, pursuant to Section 120.57(1) and Section 120.569, Florida Statutes.
2. Mr. Pillion has standing.
3. Section 473.313(5), Florida Statutes
4. Section 455. 271(6), Florida Statutes
5. Florida Administrative Code Rule 61H1-33.006
6. Florida Administrative Code Rule 61H1-33.003
7. Florida Administrative Code Rule 61H1-31.015
8. Florida Administrative Code Rule 61H1-30.030

VII. FACTS TO BE LITIGATED

1. Whether Mr. Pillion made a good faith effort to comply with the statute.
2. Whether Mr. Pillion demonstrated an illness or unusual hardship warranting reinstatement

VIII. ISSUES OF LAW TO BE LITIGATED

None at this time.

IX. ISSUES RELATED TO RULES OF EVIDENCE

None at this time.

X. PENDING MOTIONS OR OTHER MATTERS FOR ACTION BY THE JUDGE

None at this time.

XI. LENGTH OF TIME REQUIRED FOR THE HEARING

Four hours.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson _____

Rachelle Munson

Senior Assistant Attorney General

FL Bar No. 195243

Rachelle.Munson@myfloridalegal.com

Kara H. Aikens

Assistant Attorney General

FL Bar No. 1004405

Kara.Aikens@myfloridalegal.com

Office of the Attorney General

PL-01, The Capitol

Tallahassee, Florida 32399-1050

Telephone: (850) 414-3300

Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 18th day of November 2022.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner(s),

vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF APPEARANCE

The undersigned hereby files this Notice of Appearance on behalf of the Respondent, Board of Accountancy.

Copies of all pleadings, notices, and correspondence regarding the above-styled cause are requested to be served on the undersigned.

Respectfully submitted this 22nd day of November, 2022.

/S/

Rachelle Munson
Assistant Attorney General
PL-01, The Capitol
Tallahassee FL, 32399
Phone No.: 850-414-3752
EMail Address:
rachelle.munson@myfloridalegal.com
Florida Bar No.: 0195243

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of this Notice of Appearance to Dwight Slater via eMail to dwight@guildaylaw.com; brandon@guildaylaw.com; Kara Aikens via eMail to kara.aikens@myfloridalegal.com; suvonna.willis@myfloridalegal.com on this 22nd day of November, 2022.

/S/

Rachelle Munson

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner(s),

vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF FILING PROPOSED EXHIBITS

The undersigned hereby files this Notice of Filing Proposed Exhibits on behalf of the Respondent, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY.

The Proposed Exhibits have been electronically submitted through eALJ to the Administrative Law Judge.

Respectfully submitted this 22nd day of November, 2022.

/S/

Kara Aikens
Assistant Attorney General
PL-01, The Capitol
Tallahassee FL, 32399
Phone No.: 850-414-3764
EMail Address:
kara.aikens@myfloridalegal.com
Florida Bar No.: 1004405

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of this Notice of Filing Proposed Exhibits to Dwight Slater via eMail to dwight@guildaylaw.com; brandon@guildaylaw.com on this 22nd day of November, 2022.

/S/

Kara Aikens

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,
Petitioner,

v.

DOAH Case No.: 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**
Respondent.

RESPONDENT'S EXHIBIT LIST

COMES NOW the Respondent, the Department of Business and Professional Regulation (Department), Board of Accountancy, by and through the undersigned counsel, intends to introduce into evidence the following exhibits:

1. Original Florida CPA License Application (Licensure by Endorsement)
2. Department Documents Regarding Licensure Delinquency 2015
3. Department Documents Regarding Licensure Delinquency 2017
4. Application for Reinstatement of Null & Void License
5. Composite Exhibit of Petitioner's certificates of attendance for CPE courses known to the Department from January 2016 through April 2021
6. Petitioner's tax documents from the period of 2015 to 2020
7. Respondent's Notice of Intent to Deny and Amended Notice of Intent to Deny

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson _____

Rachelle Munson
Senior Assistant Attorney General
FL Bar No. 195243
Rachelle.Munson@myfloridalegal.com

Kara H. Aikens
Assistant Attorney General
FL Bar No. 1004405
Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 22nd day of November 2022.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,
Petitioner,

v.

DOAH Case No.: 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**
Respondent.

_____ /

RESPONDENT'S WITNESS LIST

COMES NOW the Respondent, the Department of Business and Professional Regulation Board of Accountancy, by and through the undersigned counsel, intends to call the following person(s) as witnesses:

1. Roger Scarborough, Executive Director, Board of Accountancy, Department of Business and Professional Regulation, 240 NW 76th Drive, Suite A, Gainesville, FL 32607
2. Any witness called by Mr. Pillion.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ *Rachelle Munson*

Rachelle Munson

Senior Assistant Attorney General

FL Bar No. 195243

Rachelle.Munson@myfloridalegal.com

Kara H. Aikens

Assistant Attorney General

FL Bar No. 1004405

Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 22nd day of November 2022.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

PETITIONER,

v.

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

RESPONDENT.

DOAH Case No.: 22-2870

NOTICE OF FILING PETITIONER'S EXHIBIT LIST

COMES NOW Petitioner, Kevin Pillion, by and through the undersigned counsel, in accordance with this Court's Notice of Hearing dated September 21, 2022, and provides notice of the filing of Petitioner's Exhibit List identifying the following exhibits Petitioner intends to introduce into evidence:

- Ex. 1: Affidavit on Behalf of Kevin Pillion and attachments
- Ex. 2: February 15, 2019, letter from Dr. Katherine Best to National Elder Law Foundation re: Petitioner and Exam Accommodation Request
- Ex. 3: September 15, 2021, letter from Dr. Katherine Best to Board of Accountancy re: Petitioner's GAD diagnosis
- Ex. 4: Clinical Records of Dr. Katherine Best re: Petitioner
- Ex. 5: April 8, 2021, letter from Petitioner to the Board of Accountancy re: Illness and Hardship
- Ex. 6: Recording of the Board of Accountancy's June 2021 Board Meeting
- Ex. 7: Transcript of Deposition of Catherine Csaky; October 5, 2021
- Ex. 8: Transcript of Deposition of Katherine Best; October 20, 2021
- Ex. 9: Transcript of Deposition of Shannon Feinroth; October 20, 2021

- Ex. 10: September 9, 2021, Memorandum re: Materials for Petitioner's Application for Reinstatement of Null and Void License and Attachments
- Ex. 11: Composite Exhibit of Petitioner's certificates of attendance for continuing professional education (CPE) courses

Respectfully submitted,

/s/ [Dwight O. Slater]

Dwight O. Slater

Fla. Bar No.: 0030607

Guilday Law, P.A.

1983 Centre Pointe Blvd., S-200

Tallahassee, Florida 32308

P: (850) 224-7091

F: (850) 222-2593

dwight@guildaylaw.com

brandon@guildaylaw.com (secondary)

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to Counsel for Respondent, Rachelle Munson, Esq., and Kara H. Aikens, Esq., Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-3300, at rachelle.munson@myfloridalegal.com, and kara.aikens@myfloridalegal.com, respectively, on this 23rd day of November, 2022.

/s/ [Dwight O. Slater]

Dwight O. Slater

Counsel for Petitioner

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner(s),

vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF FILING PROPOSED EXHIBITS

The undersigned hereby files this Notice of Filing Proposed Exhibits on behalf of the Petitioner, KEVIN PILLION.

The Proposed Exhibits have been electronically submitted through eALJ to the Administrative Law Judge.

Respectfully submitted this 23rd day of November, 2022.

/S/
Dwight Slater
Of Counsel
1983 Centre Pointe Blvd, Suite 200
Tallahassee FL, 32308
Phone No.: 850-224-7091
EMail Address: dwight@guildaylaw.com
Florida Bar No.: 0030607

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of this Notice of Filing Proposed Exhibits to Kara Aikens via eMail to kara.aikens@myfloridalegal.com; suvonna.willis@myfloridalegal.com; Rachelle Munson via eMail to rachelle.munson@myfloridalegal.com; suvonna.willis@myfloridalegal.com on this 23rd day of November, 2022.

/S/
Dwight Slater

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner(s),

vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF FILING PROPOSED EXHIBITS

The undersigned hereby files this Notice of Filing Proposed Exhibits on behalf of the Petitioner, KEVIN PILLION.

The Proposed Exhibits have been electronically submitted through eALJ to the Administrative Law Judge.

Respectfully submitted this 29th day of November, 2022.

/S/
Dwight Slater
Of Counsel
1983 Centre Pointe Blvd, Suite 200
Tallahassee FL, 32308
Phone No.: 850-224-7091
EMail Address: dwight@guildaylaw.com
Florida Bar No.: 0030607

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of this Notice of Filing Proposed Exhibits to Kara Aikens via eMail to kara.aikens@myfloridalegal.com; suvonna.willis@myfloridalegal.com; Rachelle Munson via eMail to rachelle.munson@myfloridalegal.com; suvonna.willis@myfloridalegal.com on this 29th day of November, 2022.

/S/
Dwight Slater

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner(s),
vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF FILING FINAL HEARING TRANSCRIPT

The undersigned files this Notice of Filing Final Hearing Transcript. This is a complete transcript.

Respectfully submitted, this 7th day of February, 2023.

/S/

Marion Kittrell

1500 Mahan Drive, Suite 140

Tallahassee FL, 32308

Phone No.: 850-222-5491

EMail Address:

fortherecord@tallahasseecourtreporting.com

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner(s),

vs.

Case No. 22-002870

DEPARTMENT OF BUSINESS
AND PROFESSIONAL
REGULATION, BOARD OF
ACCOUNTANCY

Respondent(s).

_____ /

NOTICE OF FINAL HEARING TRANSCRIPT

A transcript has been filed in this cause with the Division of Administrative Hearings. The parties are advised to check the Exhibit/Transcript portal for the actual date filed.

February 08, 2023



Julie Hunsaker
Clerk
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Dwight Oneal Slater, Esquire
(eServed)

Kara Aikens, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF FLORIDA

KEVIN PILLION,

PETITIONER,

v.

FLORIDA DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

RESPONDENT.

CASE No.: 22-002870

PETITIONER'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
PROPOSED RECOMMENDED ORDERS

COMES NOW Petitioner, Kevin Pillion, by and through the undersigned, and hereby files this Unopposed Motion for Extension of Time to File Proposed Recommended Orders and in support thereof states as follows:

1. The transcript of the final hearing in this matter was filed with DOAH on February 7, 2022.
2. The parties' Proposed Recommended Orders are presently due for filing on February 17, 2023.
3. Due to some recent medical issues requiring hospitalization, Counsel for Petitioner needs additional time to prepare the Proposed Recommended Order.
4. Counsel for Petitioner requests an additional fifteen (15) days to complete the Proposed Recommended Orders, making them due on March 6, 2023.

5. The undersigned certifies that he has conferred with Counsel for Respondent and is authorized to represent that Respondent does not object to the relief requested in this Motion.

6. This Motion is not being submitted for delay or for an improper purpose and will not prejudice either party.

WHEREFORE, for the foregoing reasons, Counsel for Petitioner requests that this Honorable Tribunal grant this Unopposed Motion for Extension of Time to File Proposed Recommended Orders giving the parties up to and including March 6, 2023, to file their Proposed Recommended Orders.

Respectfully submitted,

/s/ [Dwight O. Slater]

Dwight O. Slater
Florida Bar No.: 30607
Guilday Law, P.A.
1983 Centre Pointe Blvd., S-200
Tallahassee, FL 32308
P: (850) 224-7091
F: (850) 222-2593
dwight@guildaylaw.com
tessa@guildaylaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been furnished via electronic mail to: Counsel for Respondent, Rachelle Munson, Esq., at Rachelle.Munson@myfloridalegal.com, and Kara Aikens, Esq., at Kara.Aikens@myfloridalegal.com, on this 9th day of February 2023.

/s/ [Dwight O. Slater]

Dwight O. Slater
Counsel for Petitioner

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

ORDER GRANTING EXTENSION OF TIME

This cause having come before the undersigned on Petitioner's Unopposed Motion for Extension of Time to File Proposed Recommended Orders, filed February 9, 2023, as a result of counsel's recent medical issues, which constitutes good cause for the requested extension, and the undersigned having reviewed the record in this cause, it is, therefore,

ORDERED that:

1. The motion is granted.
2. The Proposed Recommended Orders shall be filed with the undersigned **no later than March 6, 2023.**

DONE AND ORDERED this 10th day of February, 2023, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Dwight Oneal Slater, Esquire
(eServed)

Kara Aikens, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF FLORIDA

KEVIN PILLION,

PETITIONER,

V.

FLORIDA DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

RESPONDENT.

CASE No.: 22-002870

PETITIONER'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
PROPOSED RECOMMENDED ORDERS

COMES NOW Petitioner, Kevin Pillion, by and through the undersigned, and hereby files this Unopposed Motion for Extension of Time to File Proposed Recommended Orders and in support thereof states as follows:

1. The transcript of the final hearing in this matter was filed with DOAH on February 7, 2022.
2. After suffering medical complications that required hospitalization, Counsel for Petitioner requested and received a brief, 15-day extension of time to file Proposed Recommended Orders up to and including March 6, 2023.
3. Upon being released from the hospital, Counsel for Petitioner worked diligently to get caught up with all pending work; however, as of the time of filing this Motion, Counsel does not believe that he will complete Petitioner's Proposed Recommended Order by 5:00 p.m. today.

4. Accordingly, Counsel for Petitioner requests an additional one-day extension of time to complete the Proposed Recommended Orders, making them due on March 7, 2023, for both parties.

5. The undersigned certifies that he has conferred with Counsel for Respondent and is authorized to represent that Respondent does not object to the relief requested in this Motion.

6. This Motion is not being submitted for delay or for an improper purpose and will not prejudice either party.

WHEREFORE, for the foregoing reasons, Petitioner requests that this Honorable Tribunal grant this Unopposed Motion for Extension of Time to File Proposed Recommended Orders giving the parties up to and including March 7, 2023, to file their Proposed Recommended Orders.

Respectfully submitted,

/s/ [Dwight O. Slater]

Dwight O. Slater
Florida Bar No.: 30607
Guilday Law, P.A.
1983 Centre Pointe Blvd., S-200
Tallahassee, FL 32308
P: (850) 224-7091
F: (850) 222-2593
dwight@guildaylaw.com
tessa@guildaylaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been furnished via electronic mail to: Counsel for Respondent, Rachelle Munson, Esq., at Rachelle.Munson@myfloridalegal.com, and Kara Aikens, Esq., at Kara.Aikens@myfloridalegal.com, on this 6th day of March 2023.

/s/ [Dwight O. Slater]

Dwight O. Slater
Counsel for Petitioner

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

_____ /

ORDER GRANTING EXTENSION OF TIME

This cause came before the undersigned on Petitioner's Unopposed Motion for Extension of Time to File Proposed Recommended Orders, filed March 6, 2023, on grounds that counsel needs one additional day to finalize his proposed order as a result of a medical emergency, which constitutes good cause for the requested extension. The undersigned having reviewed the record in this cause, it is, therefore,

ORDERED that:

1. Petitioner's unopposed motion is granted.
2. Proposed recommended orders shall be filed with the undersigned no later than March 7, 2023.

DONE AND ORDERED this 7th day of March, 2023, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

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Kara Aikens, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY**

Respondent.

RESPONDENT'S PROPOSED RECOMMENDED ORDER

A hearing was conducted in this case in Tallahassee, Florida, on November 30, 2022, before Administrative Law Judge Andrew D. Manko of the Division of Administrative Hearings, pursuant to sections 120.569, and 120.57(1), Florida Statutes (2022).

APPEARANCES

For Petitioner:	Dwight Slater Guilday Law, P.A. 1983 Centre Pointe Blvd Suite 200 Tallahassee, FL 32308
For Respondent:	Rachelle Munson Senior Assistant Attorney General Kara Aikens Assistant Attorney General Office of the Attorney General PL-01, The Capitol Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue for consideration in this hearing is whether Petitioner complied with the requirements of section 473.313(5), Florida Statutes, for licensure reinstatement.

PRELIMINARY STATEMENT

On or about April 12, 2021, Petitioner requests to reinstate his license with the Department of Business and Professional Regulation (Department), Board of Accountancy (Board). The Board first considered the request for reinstatement of Petitioner's null and void license at a duly-noticed Board meeting on May 14, 2021. Petitioner did not appear for the meeting. The Board postponed the matter until the Board meeting held on June 18, 2021, at which time Petitioner was present. A Notice of Intent to Deny Petitioner's Request for Reinstatement was filed on June 28, 2021. An Amended Notice of Intent to Deny was filed on July 28, 2021. Petitioner requested a formal hearing pursuant to Section 120.57(1), Florida Statutes.

The hearing in this case was held on November 30, 2022, in Tallahassee, Florida, before Administrative Law Judge Andrew D. Manko. At the hearing, Petitioner testified on his own behalf. Respondent presented the testimony of Roger Scarborough, Director of the Division of Certified Public Accounting.

Petitioner submitted eleven (11) exhibits into evidence. Petitioner's Exhibit 1 contained 4 pages. The exhibit includes: an affidavit on behalf of Petitioner by Catherine Csaky, an Attachment to Catherine Csaky's Affidavit, and Abstract of an article titled Anxiety, Depression, and Procrastination Among Students: Rumination Plays a Larger Mediating Role than Worry. Petitioner's Exhibit 2 contained 1 page. The exhibit includes: a letter dated February 15, 2019, from Katherine Best to the National Elder Law Foundation requesting testing accommodations for Petitioner. Petitioner's Exhibit 3 contained 1 page. The exhibit includes: a letter dated September 15, 2021, from Katherine Best to the Board of Accountancy detailing her clinical assessment of Petitioner. Petitioner's Exhibit 4 contained 1 page. The exhibit includes: an initial assessment dated February 11, 2019, by Katherine Best. Petitioner's Exhibit 5 contained 2 pages. The exhibit includes: Petitioner's hardship letter to the Florida Board of

Accountancy dated April 8, 2021. Petitioner's Exhibit 6 is a recording of the Board of Accountancy's June 2021 Board Meeting. Petitioner's Exhibit 7 contained 68 pages. The exhibit includes: the transcript of Catherine Csaky's deposition. Petitioner's Exhibit 8 contained 56 pages. The exhibit includes: the transcript of Katherine Best's deposition. Petitioner's Exhibit 9 contained 34 pages. The exhibit includes: Shannon Feinroth's deposition. Petitioner's Exhibit 10 contained 41 pages. The exhibit includes: a September 2, 2021, Memorandum re: Materials for Petitioner's Application for Reinstatement of Null and Void License and Attachments. Petitioner's Exhibit 11 contained 11 pages. The exhibit includes: continuing professional education certificates of attendance for Petitioner. All 11 exhibits were admitted as evidence.

Respondent submitted seven (7) exhibits. Respondent's Exhibit 1 contains 64 pages. It includes: the original Florida CPA License Application (Licensure by Endorsement) of the Petitioner. Respondent's Exhibit 2 contains 7 pages. It includes; Department documents regarding licensure delinquency for 2015. Respondent's Exhibit 3 contains 3 pages. It includes: Department documents regarding licensure delinquency for 2017. Respondent's Exhibit 4 contains 25 pages. It includes: Petitioner's application for Reinstatement of Null & Void License. Respondent's Exhibit 5 contains 11 pages. It includes: composite of Petitioners certificates of attendance for CPE courses known to the department from January 2016 through 2020. Respondent's Exhibit 6 contains 393 pages. It includes: Petitioner's tax documents from the period of 2015 to 2020. Respondent's Exhibit 7 contains 11 pages. It includes: Respondent's Notice of Intent to Deny and Amended Notice of Intent to Deny. All 7 exhibits were admitted as evidence.

The Administrative Law Judge took official recognition of section 473.313, Florida Statutes.

FINDINGS OF FACT

1. Petitioner was initially licensed as a Certified Public Accountant (CPA) in 2009 (Tr. 194).
2. Petitioner also became licensed as a Florida Attorney in 2009 (Tr. 43)
3. Petitioner opened his solo law practice in 2010 (Tr. 49).
4. Petitioner has maintained a thriving law practice generating hundreds of thousands of dollars since 2015 pursuant to his tax documents (Tr. 200, R's Exhibit 6).
5. Petitioner was diagnosed with Generalized Anxiety Disorder (GAD) in 2019 by Katherine Best (P's Exhibit 4, p.10).
6. CPAs are required to renew their licenses every two years (Tr. 173).
7. CPAs are required to complete 80 hours of Continuing Professional Education (CPE) every biennium (Tr. 178).
8. When a CPA fails to timely renew his/her license, the license reverts to a delinquent status (Tr. 172).
9. If a CPA has not resolved the delinquent status and fails to renew by the next biennium, the license becomes null and void by operation of law and no longer exists (Tr. 178-179).
10. A license becomes null and void when a licensee fails to renew the license for two renewal periods, consisting of two 2-year cycles totaling a 4-year period (Tr. 179).
11. Petitioner's license to practice as a CPA reverted to a delinquent status for the first time on January 1, 2016 (Tr. 194-195).
12. A license can be removed from delinquent status if the renewal fee of \$105.00, delinquency fee of \$25.00, and reactivation fee of \$250.00 is paid, and licensee attests that the required continuing education courses have been completed (Tr. 176; 204).

13. On January 17, 2016, Petitioner's license was reactivated (Tr. 195).
14. Petitioner's license to practice as a CPA reverted to a delinquent status for a second time on January 1, 2018 (Tr. 195).
15. Petitioner failed to resolve the delinquency and his license became null and void by operation of law on January 1, 2020 (Tr. 206).
16. The Department received a request from Petitioner to reinstate his null and void license in April 2021 (Tr. 201).
17. Petitioner sent a hardship letter dated April 8, 2021, to the Board for review along with the request for reinstatement (P's Exhibit 5, p. 11-12)
18. Petitioner did not present, verbally or otherwise, any indication that he took action to comply with the requirements to maintain an active CPA license (Tr. 209; P's Exhibit 6; R's Exhibit 4, p.14).
19. Petitioner's request for reinstatement of his null and void license was placed on the board agenda for May 14, 2021, for which he was properly noticed (R's Exhibit 4, p.21).
20. Petitioner failed to appear for the May 14, 2021, board meeting.
21. Petitioner's request for reinstatement of his null and void license was continued and placed on the next board meeting agenda for June 18, 2021, for which he was properly noticed (R's Exhibit 4, p.22).
22. Petitioner appeared for the June 18, 2021, board meeting where his request for Reinstatement of his Null and Void License was discussed at length by the Board (Tr. 202; P's Exhibit 6).
23. The Board voted to deny Petitioner's request for Reinstatement of his Null and Void License (Tr. 202; P's Exhibit 6).

24. The basis of the Board's decision was lack of good faith effort required by the Petitioner to comply with Section 473.313(5), the statute that governs null and void license reinstatement (Tr. 202; P's Exhibit 6).

25. Petitioner was diagnosed with Generalized Anxiety Disorder (GAD) in 2019 by Katherine Best, Ph.D., LCSW, MSW, MPH (P's Exhibit 4, p.10).

26. Petitioner testified at the DOAH hearing that the hardships in his life were his nephew's suicide in 2015 (Tr. 72;74); the financial worries of operating his solo law practice (Tr. 78;79); the anxiety of studying for and taking the Certified Elder Law Attorney Exam (CELA Exam) in 2019 (Tr. 95); the stress of turnover at his law firm (Tr. 111;112); and depression from dealing with the COVID-19 pandemic (Tr. 115).

27. Petitioner has had a dedicated administrative staff person in his law firm from 2012 to present (P's Exhibit 9, p.6).

28. Petitioner had the option and opportunity to put his CPA license in inactive status allowing him to keep his CPA license with only a fee requirement (Tr. 213).

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

30. As stipulated during the proceeding, Petitioner Pillion has the burden of proving by a preponderance of evidence that he met the requirements of Section 473.313, Florida Statutes and, accordingly, is entitled to licensure reinstatement as a certified public accountant.

31. Section 455.271(6), Florida Statutes, states:

(a) Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or

the department. The board, or the department if there is no board, shall, by rule, establish a reinstatement process for void licenses.

(b) Notwithstanding the provisions of the professional practice acts administered by the department, the department may, at its discretion, reinstate the license of an individual whose license has become void if the department determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the department for reinstatement and pay an applicable fee in an amount determined by rule. The department shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

32. Section 473.313(1), Florida Statutes, states:

A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

33. A license that is inactive is not subject to null and void status.

34. Petitioner never utilized the option of requesting the Department to place his license on an inactive status, and thus, avoid the possibility of the license becoming null and void. Further, Petitioner failed to demonstrate a reasonable basis for deciding not to place the license in an inactive status, despite his history of delinquency.

35. Section 473.313(5), Florida Statutes, states:

Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

36. Pursuant to section 473.313(5), Florida Statutes, the Board, is not

required to reinstate the license of any individual whose license has become null and void.

37. As stipulated by the parties, and pursuant to section 473.313, Florida Statutes, the period during which good faith effort is measured is the period prior to which Petitioner allowed his license to lapse and become null and void.

38. Exercising its discretion, upon consideration of Petitioner's proof of effort of compliance regarding licensure renewal requirements for an inactive and/or delinquent license, the Board applied the criteria set forth in rule 61H1-33.006, Florida Administrative Code, and section 473.313, Florida Statutes.

39. During the reestablishment periods and extension allowances applicable to 2017, 2018, 2019, and 2020, when the license became null and void, Petitioner did not provide proof of completion of CPE requirements or otherwise demonstrate compliance regarding *reactivation* as stated in rule 61H1-33.003, Florida Administrative Code, or section 473.313, Florida Statutes

40. Rule 61H1-33.003(1), Florida Administrative Code, states:

- (a) In any given reestablishment period, each current/active Florida certified public accountant must have completed at any time or times during the two-year period, at least 80 hours of educational instruction or training in public accounting subjects or courses of study, as defined hereinafter, of which at least 8 hours must have been in accounting-related and/or auditing-related subjects and of which no more than 20 hours may be in behavioral subjects and at least four hours shall be in Florida Board-approved ethics.
- (b) Florida certified public accountants who do not meet the requirements by June 30th will be granted an automatic extension until September 15th provided the Florida certified public accountant completes an additional 8 hours in Accounting and Auditing subjects. An automatic extension will be granted until December 31st provided the Florida certified public accountant completes an additional 16 hours in Accounting and Auditing subjects. For the reestablishment period ending June 30, 2020, current active licensees who complete continuing professional education (CPE) hours by December 31, 2020 are not required to complete the additional

CPE hours referenced in this subsection. CPE hours approved for this extension shall apply solely to the reestablishment period ending June 30, 2020.

41. Petitioner failed to timely submit a complete application with associated fees totaling up to \$380.00, either for the renewal of the license prior to the license becoming delinquent effective January 1, 2018, or the reactivation of the license prior to the license becoming null and void effective January 1, 2020.

42. The reference to “this section” in section 473.313(5), Florida Statutes, applies to section 473.313, Florida Statutes which, in subsections (1) through (4), details the requirements for *renewal and reactivation* of licensure as a certified public accountant.

43. Petitioner did not establish that the requirements of maintaining his professional license to practice as an attorney, managed simultaneously with his license to practice as a certified public accountant, and included payment of annual licensure renewal dues and completion of continuing education, became either deficient or void due to Petitioner’s failure to comply with the professional standards and rules for the legal profession.

44. Petitioner failed to show by a preponderance of the evidence that the experiences he described as an illness or unusual hardship, caused him to be unable to comply with section 473.313, Florida Statutes, while maintaining compliance requirements for a separate professional license.

45. Specifically, Petitioner failed to show by a preponderance of the evidence that his Generalized Anxiety Disorder (GAD) and related symptoms caused him to not comply with the renewal and reactivation requirements, while maintaining full compliance with similar professional standards for his law license.

46. Specifically, Petitioner failed to show by a preponderance of the evidence

that the management of his law practice, for which he reported income in the hundreds of thousands of dollars from 2015 through 2019 and maintained a dedicated administrative staff person from 2012 through the date of the hearing, was the reason he did not comply with the renewal and reactivation requirements for his license as a certified public accountant.

47. Specifically, Petitioner failed to show by a preponderance of the evidence that the loss of family, the impact of COVID-19, or any other matter impacting his personal life, although unfortunate or unforeseeable, was the reason he failed to comply with the renewal and reactivation requirements pursuant to section 473.313, Florida Statutes, while prioritizing other professional licensure and aspects of Petitioner's life.

48. It is also important to note that the Florida legislature has not enacted any law authorizing an ex-licensee to obtain CLE credits outside of the timeline provided for renewal or reactivation. Petitioner's contention that CLE credits completed after the license became null and void should be rejected to support any argument of good faith to comply with section 473.313, Florida Statutes.

49. Notwithstanding some evidence of completed CPE after the license became null and void, it would not be reasonable or consistent with public policy to permit former licensees by mere completion of CPE credits in the absence of compelling evidence of good faith to reinstate licenses they allowed to lapse to null and void.

50. The Board acted reasonably and within its discretion to deny the reinstatement of Petitioner's null and void license.

CONCLUSION

Petitioner failed to demonstrate a good faith effort in compliance with section 473.313, Florida Statutes. Additionally, Petitioner failed to demonstrate that his lack of compliance resulted from illness or unusual hardship. Consequently, Petitioner failed to show by a preponderance of the evidence that he met the requirements to reinstate his

null and void license. Therefore, it is RECOMMENDED that the Florida Board of Accountancy enter a final order denying Petitioner's Request for Reinstatement of a license he allowed to become null and void.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson _____

Rachelle Munson
Senior Assistant Attorney General
FL Bar No. 195243
Rachelle.Munson@myfloridalegal.com

Kara H. Aikens
Assistant Attorney General
FL Bar No. 1004405
Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law,

P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 7th day of
March 2023.

/s/ *Rachelle Munson*
RACHELLE MUNSON

DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF FLORIDA

KEVIN PILLION,

PETITIONER,

v.

FLORIDA DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

RESPONDENT.

CASE No.: 22-002870

PETITIONER'S MOTION TO ACCEPT PROPOSED RECOMMENDED ORDER AS
TIMELY FILED

COMES NOW Petitioner, Kevin Pillion, by and through the undersigned, and hereby moves this Honorable Court to enter an order accepting Petitioner's Proposed Recommended Order as timely filed, and states as follows:

1. This Court previously granted Petitioner's Unopposed Motion for Extension of Time to File Proposed Recommended Orders ("PROs"), making the parties' PROs due to be filed on March 6, 2023. The undersigned was unable to complete Petitioner's PRO by 5:00 p.m. on March 6, 2023; so, Petitioner requested and received a one-day extension, making the PROs due by 5:00 p.m. on March 7, 2023.

2. The undersigned worked diligently to complete Petitioner's PRO by the deadline; however, he underestimated how long it would take by approximately four hours. As a result, the undersigned filed Petitioner's PRO at approximately 9:00 p.m. on March 7, 2023.

3. The reason for the undersigned's delay in filing is medically related; however, candidly, the undersigned submits that this reason is an explanation—not an excuse. Accordingly, the undersigned respectfully asks this Court to accept Petitioner's PRO as timely filed.

4. Even though the undersigned certifies that he did not review Respondent's PRO before filing Petitioner's PRO, the undersigned believes that this Court should afford Respondent an opportunity to file a reply to Petitioner's PRO should it choose to do so.

5. As of the filing of this Motion, the undersigned has not been able to confer with Counsel for Respondent and, thus, is not authorized to represent Respondent's position. The undersigned has reached out to Counsel and will file an amended motion upon obtaining Respondent's position. This Motion is not being submitted for purposes of delay and will not prejudice either party.

WHEREFORE, for the foregoing reasons, Petitioner requests that this Honorable Court grant his Motion to Accept Proposed Recommended Order as Timely Filed.

Respectfully submitted,

/s/ [Dwight O. Slater]

Dwight O. Slater

Florida Bar No.: 30607

Guilday Law, P.A.

1983 Centre Pointe Blvd., S-200

Tallahassee, FL 32308

P: (850) 224-7091

F: (850) 222-2593

dwight@guildaylaw.com

tessa@guildaylaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been furnished via electronic mail to: Counsel for Respondent, Rachelle Munson, Esq., at Rachelle.Munson@myfloridalegal.com, and Kara Aikens, Esq., at Kara.Aikens@myfloridalegal.com, on this 8th day of March 2023.

/s/ [Dwight O. Slater]

Dwight O. Slater
Counsel for Petitioner

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN PILLION,

PETITIONER,

V.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY,

RESPONDENT.

CASE NO.: 22-2870

PETITIONER'S PROPOSED RECOMMENDED ORDER

A final hearing was held before the Honorable Andrew D. Manko, Administrative Law Judge, on November 30, 2022, in Tallahassee, Florida.

Appearances

For Petitioner: Dwight O. Slater, B.C.S.
Guilday Law, P.A.
1983 Centre Pointe Blvd., S-200
Tallahassee, Florida 32308

For Respondent: Rachelle R. Munson, Esq.
Kara Aikens, Esq.
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399

Statement of the Issue

The issue in this matter is whether Petitioner's certified public accountant ("CPA") license should be reinstated in accordance with section 473.313, Florida Statutes, because he made a good-faith effort to comply with licensure renewal requirements, but failed to do so due to illness or unusual hardship.

Preliminary Statement

These proceedings arose after Respondent, the Department of Business and Professional Regulation, Board of Accountancy, issued an Amended Notice of Intent to Deny Petitioner's Application for Reinstatement of Null and Void License. (Resp. Ex. 7). The Amended Notice of Intent to Deny provided: "The Board acknowledged the hardship as identified by the Applicant; however, the Board denied the request for reinstatement due to the Applicant's failure to establish 'a good faith effort to comply' as required by Section 473.313(5), F.S." Petitioner requested a formal administrative hearing in accordance with sections 129.569 and 120.57(1), Florida Statutes.

The Department forwarded the matter to the Division of Administrative Hearings where it was assigned to Administrative Law Judge Andrew D. Manko for the conduct of formal proceedings. The final hearing took place on November 30, 2022. Petitioner offered the following exhibits for admission into evidence:

- Ex. 1: Affidavit on Behalf of Kevin Pillion and attachments
- Ex. 2: February 15, 2019, letter from Dr. Katherine Best to National Elder Law Foundation re: Petitioner and Exam Accommodation Request
- Ex. 3: September 15, 2021, letter from Dr. Katherine Best to Board of Accountancy re: Petitioner's GAD diagnosis
- Ex. 4: Clinical Records of Dr. Katherine Best re: Petitioner
- Ex. 5: April 8, 2021, letter from Petitioner to the Board of Accountancy re: Illness and Hardship
- Ex. 6: Recording of the Board of Accountancy's June 2021 Board Meeting
- Ex. 7: Transcript of Deposition of Catherine Csaky; October 5, 2021
- Ex. 8: Transcript of Deposition of Katherine Best; October 20, 2021

- Ex. 9: Transcript of Deposition of Shannon Feinroth; October 20, 2021
- Ex. 10: September 9, 2021, Memorandum re: Materials for Petitioner's Application for Reinstatement of Null and Void License and Attachments
- Ex. 11: Amended Composite Exhibit of Petitioner's certificates of attendance for continuing professional education (CPE) courses

Respondent stipulated to the admissibility of all of Petitioner's exhibits, except Exhibit 11, which was admitted into evidence later during the hearing. (T. 9, 16, 140).

Respondent offered the following exhibits for admission into evidence:

- Ex. 1: Original Florida CPA License Application (Licensure by Endorsement)
- Ex. 2: Documents regarding Petitioner's delinquency in 2015
- Ex. 3: Documents regarding Petitioner's delinquency in 2017
- Ex. 4: Application for Reinstatement of Null & Void License
- Ex. 5: Composite Exhibit of Petitioner's certificates of attendance for CPE courses known to the Department of Business and Professional Regulation (Department) from January 2016 through April 2021.
- Ex. 6: Petitioner's tax documents from the period of 2015 to 2020.
- Ex. 7: Respondent's Notice of Intent to Deny dated June 28, 2021; Respondent's Amended Notice of Intent to Deny dated July 28, 2021.

Petitioner stipulated to the admissibility of Respondent's Exhibits 1–7. (T. 19).

In addition to the testimony provided by Ms. Catherine Csaky, Dr. Katherine Best, and Ms. Shannon Feinroth via deposition transcript, Petitioner testi-

fied on his own behalf. (T. 34–169). Mr. Roger Scarborough, Director of the Division of Public Accounting for the Department of Business and Professional Regulation, testified on behalf of Respondent. (T. 170–236).

The parties ordered the transcripts of the hearing, which have been submitted for consideration. The parties timely filed their proposed recommended orders on March 7, 2023.

Findings of Fact

1. Petitioner graduated from the Indiana University of Pennsylvania with a Bachelor's degree in Accounting. (T. 35). Thereafter, he sat for the CPA exam in Pennsylvania and, after completing two years of work experience, applied for and received a CPA license in the mid-1980s. (T. 36).

2. Petitioner later moved to Washington, DC, where he studied law at Georgetown University at night, while working for a national CPA firm during the day. (T. 37). He earned his Juris Doctor degree in May 1990. (T. 37).

3. After a stint working for the Securities Exchange Commission, Petitioner opened his own law firm in DC practicing estate planning. Petitioner also worked as a CPA, performing compilation work and completing tax returns. He specialized in veterinary medication practices and, generally, made his living as both a CPA and an attorney. (T. 38–39).

4. Between 2004 and 2008, Petitioner ceased practicing both law and accounting and took on the responsibility of caring for his elderly and infirm parents full time. (T. 40–41). In addition to caring for his parents, Petitioner worked to get their affairs in order—he made sure they had wills and other legal

documents in place and made sure that their long-term care would be covered. (T. 40). Petitioner's parents ultimately died within six months of each other. (T. 42).

5. Thereafter, in 2009, Petitioner became licensed as a CPA in Florida by endorsement. (T. 59). Later, Petitioner studied for, and passed, the Florida Bar exam. (T. 43). Because of his history with stress and anxiety, Petitioner sought and received accommodations during the exam, which allowed him to complete it in a smaller room with only 50 or so test takers. (T. 43–45).

6. After being admitted to the Bar, Petitioner opened his own law firm called Life Planning Law Firm. (T. 49). Over the years, his practice expanded from estate planning to the broader designation of Elder Law, as well as some probate and trust administration work. (T. 47–49). His work entailed care planning, financial planning, legal document preparation, Medicaid and public benefits planning, and various other areas. (T. 47, 51). In essence, Petitioner ended up doing for other people exactly the type of work he did for his parents. (T. 47).

7. Petitioner has run his Florida firm for more than a decade—serving as its sole attorney and working with a mix of full- and part-time paralegals. (T. 49–50). Petitioner described one of his paralegals, Shannon Feinroth, as his “super power.” (T. 50). According to him, without her, he would not be able to practice law. (T. 50).

8. Petitioner has worked seven days per week since opening his practice in 2010. (T. 50). He gets up between 5:00 am and 6:00 am every morning, and works until between 5:30 pm and 6:00 pm every evening. (T. 53).

9. After opening his firm, Petitioner essentially stopped practicing as a CPA. (T. 58). However, his experience as a CPA continued to inform his work as an attorney. (T. 58). Furthermore, Petitioner continued to participate in several accounting-related professional organizations. For example, early on, he joined the Florida Institute of CPAs (“FICPA”), for which he served as a member of the Elder Planning and Services Committee, and later as its Vice President and President. (T. 55). It is in part for these reasons that Petitioner continued to maintain his CPA license despite not practicing. (T. 58–59).

10. CPA licenses last for two years. (T. 59). Accordingly, Petitioner renewed his license in 2011, again in 2013, and again in 2015 and 2017. (T. 59–60).

11. Petitioner has suffered from a condition called Generalized Anxiety Disorder (“GAD”) for most of his life. (Pet. Ex. 8, 19). He was diagnosed by Dr. Katherine Best, who earned a Bachelor’s degree in psychology, a Master’s degree in clinical social work, and a PhD as a social behavioral scientist in community and family health. (Pet. Ex. 8, 5). She has also worked as a professor at Smith College and Simmons University in Massachusetts, as well as at the University of South Florida. (Pet. Ex. 8, 5).

12. GAD is classified as an anxiety disorder in the Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”); the diagnostic criteria include:

- Excessive anxiety and worry (apprehensive expectation), occurring more days than not for at least 6 months, about a number of events or activities (such as work or school performance).
- The person finds it difficult to control the worry.

- The anxiety and worry are associated with three or more of the following six symptoms (with at least some symptoms present for more days than not for the past 6 months).
 - Restlessness or feeling keyed up or on edge;
 - Being easily fatigued;
 - Difficulty concentrating or mind going blank;
 - Irritability;
 - Muscle tension;
 - Sleep disturbance (difficulty falling or staying asleep, or restless unsatisfying sleep).

National Institute of Health, National Library of Medicine, <https://www.ncbi.nlm.nih.gov/books/NBK519704/table/ch3.t15/> (last visited March 5, 2023).

13. According to the National Institute of Mental Health:

Occasional anxiety is a normal part of life. Many people may worry about things such as health, money, or family problems. But people with GAD feel extremely worried or nervous more frequently about these and other things—even when there is little or no reason to worry about them. GAD usually involves a persistent feeling of anxiety or dread that interferes with how you live your life. It is not the same as occasionally worrying about things or experiencing anxiety due to stressful life events. People living with GAD experience frequent anxiety for months, if not years.

National Institute of Mental Health; <https://www.nimh.nih.gov/health/publications/generalized-anxiety-disorder-gad> (last visited March 5, 2023).

14. Generally, symptoms of GAD include “heightened auditory sensitivity that results in increased distractibility (e.g. shuffling of paper, tapping of foot or pen, or hearing another coughing); an urge to urinate frequently; heart racing

and palms sweating; difficulty concentrating and pervasive feelings of worry.” (Pet. Ex. 3). “This type of symptomatology can easily lead to forgetfulness and procrastination due to obsessive need for perfection.” (Pet. Ex. 3; Pet. Ex. 8, 35).

15. Procrastination is often a large component of GAD. According to Dr. Best, “people procrastinate because they want it to be perfect, or they don’t want to deal with it, but it’s anxiety provoking.” (Pet. Ex. 8, 37). Tasks frequently get “backburnered,” and whatever provoked the anxiety takes center stage. (Pet. Ex. 8, 37).

16. GAD is considered to be an “impairment” under the Americans with Disabilities Act [“ADA”] because “mental impairment means . . . [a]ny mental or psychological disorder,” and can qualify as a disability under the ADA depending on the severity of the symptoms and their impact on the person’s life. *See Equal Emp. Opportunity Comm’n v. Phoebe Putney Mem. Hosp., Inc.*, 488 F. Supp. 3d 1336, 1349 (M.D. Ga. 2020).

17. While Dr. Best classified Petitioner as “functioning,” she made clear that sufferers of GAD can experience spikes in their level of anxiety under certain circumstances like testing or social encounters. (Pet. Ex. 8, 32). People with GAD are not able to easily compartmentalize anxiety-inducing circumstances and, as a result, they often cannot set stressful matters aside in order to attend to and complete other tasks. (Pet. Ex. 8, 37). This is especially true for people like Petitioner who also present with obsessive compulsive tendencies. (Pet. Ex. 8, 21–22, 37).

18. Since around 2015, Petitioner suffered from an extraordinary level of anxiety and depression due to several factors. (Pet. Ex. 5, 11; Pet. Ex. 7, 23). For instance, the death of his nephew caused Petitioner significant stress and depression. (Pet. Ex. 5, 11). Petitioner was very close with his nephew. (Pet. Ex. 5, 11). So, his death by suicide hit Petitioner particularly hard—which was only compounded by the fact that Petitioner’s younger brother had died by suicide years prior. (Pet. Ex. 5, 11; T. 72–73)). The death of his nephew, and having to relive the death of his brother, caused Petitioner significant stress and anxiety. He replayed the image of his brother draped across his nephew’s coffin, crying profusely, over and over in his head. (T. 75). These thoughts affected both his personal and professional life. (T. 75). The anxiety and depression help explain why he fell behind on certain things and why he waited to the last moment to complete others. The depression overwhelmed him. (T. 77). As a result, Petitioner put off several tasks, including completing his continuing education credits for his CPA license. (T. 78).

19. Additionally, Petitioner experienced significant financial worries and hardships that worked to exacerbate his GAD. (T. 78–79; Pet. Ex. 5, 11). While Petitioner maintained considerable assets, he suffered problems with cash flow. (T. 79). During this timeframe, his monthly expenses, which totaled in the tens of thousands, exceeded the amount of money he earned. (T. 79). As a result, he frequently had to tap into his savings in order to make ends meet. (T. 79). Furthermore, Hurricane Irma forced Petitioner to close his office for three to four

weeks. (T. 82; Pet. Ex. 7, 50). This lost revenue almost put Petitioner out of business; so, in an effort to avoid situations like this in the future, Petitioner purchased a second, more inland, office. (T. 83–85). While this purchase in some ways reduced the fear of having to shut down completely—as Petitioner had to do after Irma—it increased stress in other ways. (T. 88). Obviously, Petitioner’s overhead expenses increased with the addition of a second office; that, along with the stress of securing and paying the loan for the building (and servicing other debt), put additional financial strain on Petitioner, which, of course, increased his stress and anxiety level. (T. 89). Petitioner’s cash flow problems were so severe that he considered laying off employees. (T. 88–89). In the end, he had to reduce salaries and benefits. (T. 89, 91).

20. During the relevant time frame, Petitioner’s stress and anxiety level also increased while he pursued a certification, specifically, the Certified Elder Law Attorney (“CELA”) certification. (T. 95). Studying for and taking the exam caused Petitioner significant stress—the amount of material he had to master “would blow your mind.” (T. 96). Whenever he was not working, he studied for the exam. (T. 97). This intense schedule lasted for months. (T. 97–98). Acting on the advice Catherine Csaky, who has a background as a clinician in mental health counseling, Petitioner sought the assistance of Dr. Best with obtaining reasonable accommodations for the CELA exam. (T. 101). Based on Dr. Best’s diagnosis and recommendations, Petitioner sought and received reasonable accommodations. (T. 102).

21. Excessive turnover at Petitioner's law firm contributed to his stress and anxiety as well. (T2, 4). Because he was the only attorney working at his law firm, Petitioner relied heavily on paralegals. Between 2015 and 2017, Petitioner hired between five and seven paralegals—most of whom did not work out. (T2. 6). As a result, Petitioner was saddled with both legal and paralegal work. (T2. 6). The extra work, of course, increased his anxiety level. (T2. 8).

22. The Covid-19 pandemic also served to increase Petitioner's stress and anxiety. Petitioner's routine changed significantly; all of sudden, he and his staff had to expend considerable time cleaning the office. (T2. 9). Additionally, his business suffered, which only worsened his cash flow problems which, in turn, exacerbated his GAD. (T2. 9). Making matters worse, Petitioner suffers from a heart condition, which made contracting Covid especially dangerous and, of course, anxiety-inducing. (T2, 12).

23. With his GAD—and all the aforementioned circumstances that made it worse—Petitioner allowed his CPA license to lapse. Petitioner failed to renew his license in 2017, so it expired. It became delinquent on January 1, 2018. Then, on January 1, 2020, the license became “null and void.” (T. 31; Joint Pre-Hearing Statement).

24. Petitioner first learned that his license had become “null and void” in 2021 when he checked it on the Department's website. (T. 60). Petitioner immediately reached out the Board of Accountancy to inquire as to the steps to reinstate his license. (T. 60). He was advised that he would have to complete an application, as well as 120 hours of CPEs before his license would be reinstated.

(T2, 27). So, between January 2021 and February 2021, Petitioner completed 130 hours of CPEs—more than the required amount. (Pet. Ex. 11, 216). Petitioner had also completed several CPE credits between November 2016 and January 2019. *See* (Pet. Ex. 11, 327–333). *See also* (T2. 80) (“Q: For the following biennium, July 1, 2017, to June 30, 2019, how many did petitioner’s certification represent as completed? A: Ten.”).

25. He was able to maintain his law license during this time because, unlike the CPA license, the law license is the source of his livelihood; so, naturally, his law practice stayed front of mind. (T2. 21). Further, he had an entire team devoted to keeping his law practice going; he had no such support with respect to his CPA license. (T2. 21–22).

26. Even though he does not use the CPA license regularly, Petitioner very much values the license. Not only does it add value to his services as an estate planning and elder law attorney, it allows him to volunteer for various organizations—an activity he very much enjoys. The CPA license did not lapse because Petitioner did not care about it; his mental illness, specifically GAD, impaired his ability to concentrate and the added stress of the personal and professional problems he experienced prevented him from keeping up with the continuing education requirements. (T2. 24–25). In some ways, it is as though Petitioner “forgot” about the CPA license. Because the GAD and all the other stressors were pushed to the front of his mind, there simply was no room for continuing education credits. (T2. 26).

27. Roger Scarborough, Director of the Division of Public Accountancy, testified that, to demonstrate “good-faith effort” an applicant for reinstatement would have to show that he or she completed “some” CPE credits. (T2. 122) (“Hey, did you complete some CPE? That’s an indication to us you were making an effort to comply with the renewal. Show us some proof during the time period.”).

28. In this case, Respondent concedes that Petitioner completed “some” CPEs during the relevant time period. *See* (T2. 80) (“Q: For the following bien-nium, July 1, 2017, to June 30, 2019, how many did petitioner’s certification represent as completed? A: Ten.”); (T2, 127) (Q: “Ms. Munson showed you a dia-gram where you indicated – or which showed that Mr. Pillion did, in fact, do some CPEs during the relevant period? A: Yes. Yes.”).

29. In addition to the CPE credits presented by Petitioner during the hear-ing, Petitioner also testified that he had completed other CPEs during the rele-vant time period for which he could not obtain certificates. *See* (T2. 19).

30. The Board of Accountancy has not established a “cutoff” date for ap-plying the “good-faith effort” standard. However, the Board has addressed this issue in the past. For example, at its January 2020 meeting, the Board specifi-cally expressed concern regarding the duration of time that a licensee has gone without keeping current and the ability to resume practice by simply taking some CPE courses. Unfortunately, the discussion concluded with the suggestion that a statutory change might be required. *See* Bd. of Accountancy, Rules Committee Agenda, January 22, 2020, Meeting Minutes available at

<http://www.myfloridalicense.com/dbpr/cpa/committees/rules/2020/1jan/jan22minutes.pdf> (last visited March 7, 2023).

31. During the final hearing, an apt discussion took place that gets to the heart of the issue in this case. The statute permits the Board to reinstate a CPA license if the licensee made a good-faith effort to comply with the requirements, but was unable to do so due to illness or unusual hardship. However, according to Mr. Scarborough, the Board has yet to resolve the issue of how one might demonstrate a good-faith effort if one were in a coma during the relevant time frame. It simply cannot be the case that being effectively unable to make any effort at all should foreclose on a licensee's ability to reinstate his or her license. The Legislature created this reinstatement method for a reason, and interpreting it to foreclose on the ability to reinstate because a licensee is too ill makes little sense. If anything, it would have to be the case that the required showing of good-faith effort must be dependent, in some way, on the severity of the illness or the unusualness of the hardship. For example, a week-long flu would require a much stronger showing of good-faith efforts than, say, a two-year coma.

32. In this case, GAD—a chronic disorder that affects every aspect of Petitioner's life, a condition that causes severe procrastination and makes those who suffer from it prioritize anxiety-causing matters over all other matters—is sufficiently debilitating to require a lower showing of good-faith efforts. *See* (Pet. Ex. 7, 57) (“Yes, across the board, absolutely. Absolutely every aspect of his life is impacted by this devastating disorder.”). It is clear from the testimony that Petitioner's GAD, coupled with the myriad unusual hardships he experienced

(the death of his nephew, financial worries, the CELA exam, staffing turnover, and the pandemic), all worked to prevent him from complying with the CPA licensure requirements.

33. By finding that Petitioner failed “to establish ‘a good faith effort to comply’ as required by Section 473.313(5), F.S.,” the Board essentially conflated “good-faith effort” with some undefined, unpromulgated number of hours of CPE credits. Director Scarborough acknowledged as much when he testified that a licensee would have to demonstrate that he or she completed “some” CPE credits. Candidly, the above findings, in some ways, adopt a similar approach. But, because no number of hours, and no guidance as to how the Board should evaluate good-faith efforts, has been adopted in rule form, the method employed by the Board smacks of arbitrariness. How many hours constitute a good-faith effort? The best answer Mr. Scarborough could offer was “some.” This comes extremely close to the very definition of arbitrary. See *Arbitrary*, *Black’s Law Dictionary* (11th ed. 2019) (“Depending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures.”).

34. Indeed, it is unclear to this Court that the Legislature had this type of quantitative standard in mind when it wrote the words “good faith effort.” Black’s Law Dictionary defines “good faith” as “A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.” Good

Faith, *Black's Law Dictionary* (11th ed. 2019). There was no evidence presented, or even a suggestion, that Petitioner's state of mind did not consist of "honesty in belief or purpose," or that he had any intent to defraud or seek unconscionable advantage. In fact, the only evidence of Petitioner's state of mind established the precise opposite. See (T2. 131–32) ("I had no intent to fraud [sic], you're correct, And it's not out of malice. It's because of the illness that I couldn't concentrate and focus on that with everything going on in my world."). See also (Pet. Ex. 7, 55–56) ("And I also know that he's sincere and he's remorseful when he says this was not intentional. The fact that he let his license lapse is not because he did not deem it important enough to do what he has to do to keep it active. It was because of the constant state of anxiety that he's in. It was not intentional on his part.").

35. Therefore, the Court finds that Petitioner made a good-faith effort to comply with the licensure requirements but failed to comply because of illness or unusual hardship. Accordingly, the Board should have reinstated Petitioner's license.

Conclusions of Law

36. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with sections 120.569 and 120.57(1), Florida Statutes.

37. In licensing cases, the burden is on the applicant to demonstrate entitlement to the requested license by a preponderance of the evidence. *Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981); *Balino v. Dep't of*

Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977). A “preponderance” of the evidence means the greater weight of the evidence. See *Fireman’s Fund Indemnity Co. v. Perry*, 5 So. 2d 862 (Fla. 1942). In this instance, Petitioner, as an applicant for reinstatement, bears the burden of proof.

38. This proceeding before the Division is *de novo*. § 120.57(1)(k), Fla. Stat. Because this is a *de novo* proceeding, it is intended to formulate final agency action, not to review action taken earlier and preliminarily. *Haines v. Dep’t of Children & Families.*, 983 So. 2d 602,606 (Fla. 5th DCA 2008) (citing *Dep’t of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981)).

39. Section 473.313(5), Florida Statutes, provides:

Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

40. Florida Administrative Code Rule 61H1-31.015, provides:

Upon approval of the board, reinstatement of a null and void license must be accompanied by an application fee of \$250.00. The completion of the requirements of Rule 61H1-33.006, F.A.C. shall be required for reinstatement.

41. Florida Administrative Code Rule 61H1-33.006, provides:

(1) Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public

accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the Department, the CPA Change of Status Form (DBPR CPA 7), which is incorporated by reference in Rule 61-35.003, F.A.C., and available on the Department's website and the Board office located at 240 N.W. 76th Drive, Suite A, Gainesville, FL 32607-6655.

- (2) However, if a licensee completed, reported, and provided proof of CPE completion in the DBPR On-line Services Portal pursuant to Rule 61H1-33.003, F.A.C., but their license is delinquent on January 1 for failure to report compliance with continuing professional education requirements and pay renewal fees by the preceding December 31st, a licensee may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed and by paying the renewal and reactivation fees required by Rules 61H1-31.003, 61H1-31.004 and 61H1-31.006, F.A.C., by March 15 of the same year of the delinquency.
- (3) For a licensee to reactivate a delinquent license after March 15 of the same year of the delinquency or to reactivate an inactive license at any time, their application shall include proof of CPE completion of the required number of continuing professional education hours as follows:

[***]
- (4) All continuing professional education courses must be completed no more than 24 months immediately prior to the date of the application for reactivation.
- (5) The first establishment period after reactivation shall commence on the following June 1st and the initial designated reestablishment date shall be the third June 30th following reactivation.

42. Very few cases have addressed the issues presented in this matter.

However, the case of *John Charles Count, Jr. v. Bd. of Prof'l Surveyors & Mappers*, Case No. 07-5789 (DOAH Aug. 14, 2008; DBPR Nov. 12, 2008), is instructive because it most closely tracks the facts presented here. In that case, the petitioner's surveyor license became null and void in September 1998. In September 2007—nine years later—petitioner applied for reinstatement of his license. The Board held a hearing during which petitioner explained why he believed his illness, obstructive sleep apnea, contributed directly to his inability to complete the required continuing education hours. After questioning petitioner, the Board voted to deny him reinstatement and issued a Notice of Intent to Deny, which found that he had “failed to present evidence of a good faith effort to comply with the license renewal statutes and rules, and failed to present evidence that rises to the level of illness or unusual hardship that would justify the failure to renew the license.”

43. During the formal administrative hearing challenging the denial, petitioner presented evidence showing that his illness, obstructive sleep apnea, made it difficult for him to stay awake during meetings and while driving; that he had lost a position for sleeping on the job, and that he left a position because he was afraid that he would fall asleep during the long commute from his home to the job. He attempted to complete the required CE credits—he obtained 12 hours in 1993, 18 in 1994, and few others subsequently. But, he did not feel safe traveling to CEs that were far away from his home for fear that he might fall asleep while driving; he also worried that he would sleep during the presentations and disturb the instructors and other attendees. In the end, Administrative

Law Judge Barbara J. Staros found that petitioner had made a good-faith effort to comply with the licensure renewal statutes and rules, and that his failure to comply was due to his illness, and recommended that the Department grant the reinstatement application.

44. The present case is similar to *Count* in several respects. In both cases, the licensees suffered from an illness (sleep apnea and GAD); both licensees completed some, but not all, of the required continuing education credits; both contended that their illnesses contributed to their failure to comply with the licensure renewal requirements; and both were denied reinstatement by their respective boards. Just as the petitioner in *Count* presented evidence at the formal hearing to show how his illness affected his ability to comply, Petitioner in this case presented credible evidence to show that GAD affects all aspects of his personal and professional life—including his ability to timely complete CPEs.

45. In short, the preponderance of the evidence established that Petitioner made a good-faith effort to comply with the license renewal statutes and rules, and that his failure to comply was due to illness and unusual hardship that justified his failure to renew. To hold otherwise, this Court would have to conclude—contrary to the evidence presented—either that (1) GAD is not an “illness” or that it is not sufficiently serious to hinder Petitioner’s ability to comply with the licensure requirements; or that (2) the number of CPE hours Petitioner completed during the relevant timeframe is insufficient to constitute a good-faith effort. The Court declines to discount the severity of Petitioner’s illness—a disorder recognized in the DSM-5 and under the ADA. The Court likewise declines to

embrace the unpromulgated and arbitrary “some” standard advanced by Respondent.

Recommendation

46. Upon consideration of the facts found and the conclusions of law reached, it is RECOMMENDED: That a final order be entered granting Petitioner’s application for reinstatement of his license as a CPA.

Respectfully submitted,

/s/ [Dwight O. Slater]
Dwight O. Slater
Florida Bar No.: 30607
Guilday Law, P.A.
1983 Centre Pointe Blvd., S-200
Tallahassee, FL 32308
P: (850) 224-7091
F: (850) 222-2593
dwight@guildaylaw.com
tessa@guildaylaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was furnished via email to Counsel for Respondent, Rachelle R. Munson, Esq., at m.munson@myfloridalegal.com, and Kara Aikens, Esq., at kara.aikens@myfloridalegal.com, on this 7th day of March, 2023.

Respectfully submitted,

/s/ [Dwight O. Slater]
Dwight O. Slater
Counsel for Petitioner

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,
Petitioner,

v.

DOAH Case No.: 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,**
Respondent.

**RESPONDENT'S OBJECTION TO PETITIONER'S UNTIMELY PROPOSED
RECOMMENDED ORDER**

COMES NOW the Respondent, the Department of Business and Professional Regulation (Department), Board of Accountancy (Board), by and through the undersigned counsel, to object to Petitioner's Motion to Accept Proposed Recommended Order as Timely Filed. In support of the objection, Petitioner states the following:

1. The transcript of the hearing, held on November 30, 2022, was filed with this tribunal on February 7, 2023.
2. On February 8, 2023, via e-mail, Petitioner asked Respondent for a 15-day extension due to medical issues. Respondent did not object. (Attachment A)
3. On February 9, 2023, Petitioner filed an Unopposed Motion for Extension of Time to File Proposed Recommend Orders. Petitioner's motion was granted by this tribunal.
4. On March 6, 2023, via e-mail, Petitioner asked Respondent for a second extension until March 7, 2023. Respondent again did not object. (Attachment B)
5. Petitioner filed a second Unopposed Motion for Extension of Time to File Proposed Recommend Orders on March 6, 2023. Petitioner's second motion for an extension of time was also granted by this tribunal.

6. Respondent submitted its Proposed Recommended Order timely and as agreed upon on March 7, 2023.
7. Unlike with the two previous extensions, Petitioner did not provide consideration and contact Respondent regarding his third request for an extension of time. Notably, Respondent submitted its Recommended Order timely and in good faith as required by this tribunal.
8. **Unfair Advantage.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because opposing counsel would be afforded the opportunity to review Respondent's Proposed Recommended Order and adjust any of its arguments, creating an unfair advantage for representation with this tribunal.
9. **Extra Time.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because it awards opposing counsel extra time that Respondent did not receive.
10. **Unwarranted Delay.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because it creates an unwarranted delay.
11. **Undue Delay.** Opposing counsel admits in Attachment B that, "...it took me quite a bit of time to get caught up with things. In fact, I'm still not completely caught up." This request for the additional delay did not represent emergent circumstances and the untimely submission constitutes an undue delay.
12. **Lack of Specificity.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because Petitioner's reasons for each delay were either general or redundant in nature and do not specify a reasonable basis to unilaterally ignore the second extension date.

13. **Abuse of Process.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because opposing counsel's conduct appears to represent a pattern of failing to respect deadlines. Respondent finds this conduct an abuse of process.
14. **Public Policy.** Consideration of the untimely filed Proposed Recommended Order is highly prejudicial because it is poor public policy for parties to rely on rules requiring deadlines without equal application and enforcement of those rules.
15. **False Presentation.** Petitioner states in the Preliminary Statement of its untimely Proposed Recommended Order, "...parties timely filed their Proposed Recommended Orders on March 7, 2023." Respondent strongly objects to this false statement.

Acceptance of Petitioner's untimely Proposed Recommended Order as timely filed would be highly prejudicial to Respondent. Petitioner respectfully requests that the Administrative Law Judge not accept Petitioner's Proposed Recommended Order as timely and not consider it for its Recommended Order for the reasons stated above.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson
Rachelle Munson
Senior Assistant Attorney General
FL Bar No. 195243
Rachelle.Munson@myfloridalegal.com
Kara H. Aikens
Assistant Attorney General
FL Bar No. 1004405
Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol

Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwight@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 8th day of March 2023.

/s/Rachelle Munson_____

RACHELLE MUNSON

Attachment A

Kara Aikens

From: Rachelle Munson
Sent: Wednesday, February 8, 2023 11:33 AM
To: Tessa Pullen
Cc: Dwight Slater; Kara Aikens; Suvonna Willis
Subject: RE: Kevin Pillion vs. DBPR Board of Accountancy

We have no objection. Given his recent hospitalization, we hope Attorney Slater is feeling much better. Thank you.



Rachelle Munson
Senior Assistant Attorney General
Administrative Law Bureau
Office of the Attorney General
Tel: 850-414-3752
E-Mail: Rachelle.Munson@myfloridalegal.com

From: Tessa Pullen <Tessa@guildaylaw.com>
Sent: Wednesday, February 8, 2023 10:06 AM
To: Rachelle Munson <Rachelle.Munson@myfloridalegal.com>; Suvonna Willis <Suvonna.Willis@myfloridalegal.com>
Cc: Dwight Slater <Dwight@guildaylaw.com>
Subject: FW: Kevin Pillion vs. DBPR Board of Accountancy

Ms. Munson,

Pursuant to our phone conversation yesterday, it appears that you were correct in your understanding that the court reporter was to file the hearing transcripts with DOAH and that was completed late yesterday.

The 10-day deadline to submit proposed orders would be February 17. Due to recent medical issues, Mr. Slater is requesting a 15-day extension on this filing with the new deadline being March 6.

Please provide your position on this request for extension of time. Thank you.

Tessa M. Pullen
tessa@guildaylaw.com

Legal Assistant to **Robert D. Fingar**
bob@guildaylaw.com
Legal Assistant to **Dwight O. Slater**
dwight@guildaylaw.com



Guilday Law, P.A.
1983 Centre Pointe Blvd. S-200

Tallahassee, Florida 32308

Firm: 850.224.7091 Direct: 850.701.4375 Fax: 850.222.2593

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From: Tessa Pullen

Sent: Tuesday, February 7, 2023 12:00 PM

To: 'rachellemunson@myfloridalegal.com' <rachellemunson@myfloridalegal.com>;

'suvonna.willis@myfloridalegal.com' <suvonna.willis@myfloridalegal.com>

Subject: Kevin Pillion vs. DBPR Board of Accountancy

Importance: High

Good morning, Ms. Munson –

We received the hearing transcript from the court reporter on 1/31/23. I apologize for the delay in filing the transcript as Mr. Slater was in the hospital last week unexpectedly.

We plan on filing the transcript today. At this time, we are requesting a 15-day extension on filing the proposed recommended order for the above matter. Please advise as to your position on this request for extension of time.

Thank you!

Tessa M. Pullen

tessa@guildaylaw.com

Legal Assistant to **Robert D. Fingar**

bob@guildaylaw.com

Legal Assistant to **Dwight O. Slater**

dwight@guildaylaw.com



Guilday Law, P.A.

1983 Centre Pointe Blvd. S-200

Tallahassee, Florida 32308

Firm: 850.224.7091 Direct: 850.701.4375 Fax: 850.222.2593

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Attachment B

Kara Aikens

From: Rachelle Munson
Sent: Monday, March 6, 2023 3:26 PM
To: Dwight Slater
Cc: Kara Aikens
Subject: RE: One More Day?

Dwight,

It is not my client's preference; however, I can appreciate you needing another day for medical reasons if you so stipulate in your motion.

Rachelle Munson
Senior Assistant Attorney General
Administrative Law Bureau
Office of the Attorney General
Tel: 850-414-3752
E-Mail: Rachelle.Munson@myfloridalegal.com

-----Original Message-----

From: Dwight Slater <Dwight@guildaylaw.com>
Sent: Monday, March 6, 2023 3:20 PM
To: Rachelle Munson <Rachelle.Munson@myfloridalegal.com>; Kara Aikens <Kara.Aikens@myfloridalegal.com>
Subject: One More Day?

Ladies,

After my hospitalization, it took me quite a bit of time to get caught up with things. In fact, I'm still not completely caught up. In any event, I'm looking at the clock now, and I don't think I'll be able to finish my PRO by 5:00. So, I plan to ask for a 1-day extension. Given the late hour, I assume you object; but let me know if you don't.

Thanks,
Dwight

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD OF
ACCOUNTANCY,

Respondent.

ORDER GRANTING MOTION TO ACCEPT PROPOSED RECOMMENDED ORDER AS TIMELY

This cause came before the undersigned on Petitioner's Motion to Accept Proposed Recommended Order as Timely Filed, filed March 8, 2023. Petitioner previously requested one unopposed 30-day extension of time and a second unopposed one-day extension of time for the parties to file their proposed recommended orders ("PROs"). The PROs were due to be filed on March 7, 2023. Although Respondent timely filed their PRO at 4:59 p.m., Petitioner's PRO was not e-filed until after 5:00 p.m., on March 7, 2023, which rendered the PRO one-day late because it was not docketed until 8:00 a.m., on March 8, 2023. Petitioner's counsel confirmed that he did not review Respondent's PRO, he simply underestimated the time needed to finish his PRO. However, in order to remedy any prejudice resulting from the belated filing, Petitioner indicated that he would not object to allowing Respondent an opportunity to file a reply to his PRO. Respondent filed an Objection to Petitioner's Untimely Proposed Recommended Order on March 8, 2023, arguing that the undersigned should not consider Petitioner's PRO because he received an unfair advantage in being able to review Respondent's PRO before filing his own and that Respondent is prejudiced thereby. Importantly, however, any prejudice or unfair advantage can easily be remedied by giving Respondent an opportunity to review Petitioner's PRO and file a reply thereto. The undersigned having reviewed the record in this cause, it is, therefore,

ORDERED that:

1. Petitioner's Motion is granted. Petitioner's PRO is accepted as timely filed.

2. **On or before March 20, 2023**, Respondent may file a reply to Petitioner's PRO so as to cure any purported unfair advantage or prejudice resulting from Petitioner's PRO being filed one day late.

DONE AND ORDERED this 9th day of March, 2023, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Dwight Oneal Slater, Esquire
(eServed)

Rachelle R. Munson, Esquire
(eServed)

Kara Aikens, Esquire
(eServed)

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN PILLION,

Petitioner,

vs.

Case No. 22-2870

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY**

Respondent.
_____ /

**RESPONDENT'S RESPONSE TO PETITIONER'S
PROPOSED RECOMMENDED ORDER**

COMES NOW the Respondent, the Department of Business and Professional Regulation (Department), Board of Accountancy (Board), by and through the undersigned counsel, to respond to Petitioner's Proposed Recommended Order in this matter.

APPEARANCES

For Petitioner:	Dwight Slater Guilday Law, P.A. 1983 Centre Pointe Blvd Suite 200 Tallahassee, FL 32308
For Respondent:	Rachelle Munson Senior Assistant Attorney General Kara Aikens Assistant Attorney General Office of the Attorney General PL-01, The Capitol Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue for consideration in this hearing is whether Petitioner complied with the requirements of section 473.313(5), Florida Statutes, for licensure reinstatement.

PRELIMINARY STATEMENT

After the final hearing was conducted on November 30, 2022, Petitioner's counsel requested without opposition to extend the date for a timely submission of his Proposed Recommended Order. Petitioner without opposition received approval for a 15-day extension until March 6, 2023. Petitioner without opposition received approval for a second extension date from March 6, 2023, to March 7, 2023. Respondent timely submitted a proposed recommended order on March 7, 2023. Petitioner submitted a proposed recommended order on March 8, 2023, untimely and with opposition from the Respondent. Respondent now respectfully submits a response to Petitioner's untimely submitted proposed recommended order.

RESPONSE TO PETITIONER'S FINDINGS AND CONCLUSIONS

1. Respondent respectfully relies on the single statutory basis governing consideration of this matter, section 473.313(5), F.S., which states in relevant part:

“Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship.”

2. The petitioner, in its proposed recommended order, provided a single case for consideration where an applicant requested reinstatement of a null and void license. In paragraph 42 of its recommended order, Petitioner cited *John Charles Count, Jr. v. Bd. of Prof'l Surveyors & Mappers*, Case No. 07-5789 (DOAH Aug. 14, 2008; DBPR Nov. 12, 2008), as “instructive” and “most closely” tracking the facts of the present case. The licensee in *Count* presented issues impacting his full ability to maintain professional licensure. Unlike in the present case, the facts of *Count* did not present any scenario where the petitioner thrived in certain aspects of his professional responsibilities for his license and neglected other aspects of his professional responsibility. The petitioner argued in *Count* that his medical issues directly and negatively contributed to his

capacity to comply with the requirements of professional licensure renewal. Any deficiencies or problems the licensee experienced in that case occurred despite his best effort to comply with the licensure renewal requirements. In the instant case, Petitioner extended efforts necessary to maintain his professional law license and did not apply equivalent or comparable effort to maintain his CPA license during the period under consideration. The cases, therefore, do not closely track for factual purposes.

3. Moreover, the *Count* case and the present case also cannot closely track for legal purposes. Section 455.271(6), F.S., the statute that governed in *Count*, does not apply to the present case. The statutory language in section 455.271(6), F.S., specifically states in its current form that, “This subsection does not apply to individuals subject to regulation under chapter 473.” Any previous version, interpretation, or application of section 455.271(6), F.S. (2008), different from what governs the Petitioner in the present case, is misplaced. Therefore, any reference to or reliance on the standards presented in section 455.271(6), F.S. (2008), for consideration, review, or legal resolution are inapplicable and should be rejected for consideration in the present case.

4. In the absence of any prevailing case law for the application of section 473.313(5), F.S., Respondent recognizes the statutory guidance available in the language itself. Respondent acknowledges first and foremost that professional licensure is neither guaranteed nor does it exist without regulatory requirements. In fact, it is well-seasoned law that, “[a] professional or occupational license is not a right, but a privilege. *Astral Liquors, Inc. v. Dept. of Business Regulation*, 463 So.2d 1130 (Fla.1985). In appreciation of that distinction, the Florida legislature carved out in statute the ability for the Board to maintain authority, in its discretion, to reinstate [or not] any license that an individual allowed to lapse to the extent that the license became null and void. Respondent recognizes and fully respects and appreciates the *de novo* authority of this

tribunal. *Haines v. Dep't of Children & Families.*, 983 So. 2d 602,606 (Fla. 5th DCA 2008) (citing *Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981)).

Respondent, however, also notes that the Board in this case acted reasonably within its discretionary right to deny Petitioner's request for reinstatement based on Petitioner's failure to meet the criteria set forth in section 473.313(5), F.S. Petitioner's proposed recommended order did not show by a preponderance of the evidence, the requisite standard for remedy, sufficient information or argument to conclude otherwise.

5. Section 473.313(5), F.S., states in relevant part that the Board may consider reinstating a null and void license "if the individual has made a good faith effort to comply with this section..." Good faith effort" is an implied contractual term and it is defined as "what a reasonable person would determine is a diligent and honest effort under the same set of facts or circumstances." <https://definitions.uslegal.com/g/good-faith-effort/> (last visited March 20, 2023). Also see, *Troutt v. City of Lawrence*, 2008 U.S. Dist. LEXIS 61641 (S.D. Ind. Aug. 8, 2008). Notwithstanding Petitioner's reference in paragraph 32 of their proposed recommended order to a definition of "good faith" from Black's Law Dictionary, Petitioner in the present case did not by any standard demonstrate a good faith effort to comply with section 473.313(5), F.S. Petitioner maintained a successful law practice. With every or any measure of effort in this case, Petitioner does not have the luxury of bifurcating his consistent and resilient efforts in maintaining his law license from his deficient and neglectful efforts in failing to maintain his CPA license, especially when measuring efforts during the same time.

6. Petitioner, in paragraph 33 of its proposed recommended order, suggests the Board "conflated 'good faith effort' with some undefined, unpromulgated number of CPE credits." Respondent disagrees. Director Scarborough's reference that Petitioner provides evidence that he completed some CPE credits prior to allowing his license to lapse into a null and void status is a reasonable, not arbitrary, consideration. Based on

licensure renewal requirements, a licensee must comply with specific criteria to maintain a license in good standing. Rule 61H1-33.003(1), F.A.C., specifically outlines that the licensee is required to complete 80 hours during each biennium. Rule 61H1-33.006, F.A.C., specifically states the CPE requirements for a licensee who has allowed his license to revert to a delinquent status. The rules for CPE compliance, therefore, are very specific. Director Scarborough's testimony during the final hearing was provided with consideration to Petitioner's failure to show proof of CPE completions that would be remotely compliant to the CPE requirements during the period in question. Respondent's curiosity regarding any or "some" proof regarding CPE completions is a necessary, not arbitrary, consideration in determining what effort, if any, Petitioner demonstrated to comply with the rules. Those rules which, in addition to providing quantitative and measurable guidelines, are very well-promulgated and conspicuous for each licensee to be aware.

7. Petitioner completed all continuing legal education requirements and maintained a license in good standing as a practicing attorney during the period in question and throughout his licensure history. However, as noted in Petitioner's proposed recommended order in paragraph 9, Petitioner stopped practicing as a CPA. As evidenced by the record, Petitioner did not maintain the same licensing history or demonstrate the same efforts to maintain his CPA license. Petitioner's efforts to maintain both of his professional licenses in good standing greatly varied. In paragraph 33 of Petitioner's proposed recommended order, Petitioner inquired, "How many hours constitute a good-faith effort?" Respondent would request that this tribunal recognize that the level of effort should at least be comparable to that which Petitioner displayed to maintain his law license. Clearly, it was not. Further, whether you rely on Black's Law Dictionary regarding the meaning of arbitrary, as Petitioner referenced in paragraph 33 of their proposed recommended order, the decision of Petitioner to not nearly complete

the requirements for renewal of his CPA license may, in fact, have been an arbitrary act on his part. Petitioner has failed to show by a preponderance of the evidence how he successfully completed continuing education requirements for his law practice, successfully completed a certification exam for his law practice, managed personnel in the law practice, sustained two legal offices, even during the midst of a pandemic, without incurring any law licensure deficiencies. For the same period and during the same circumstances, the Petitioner did not provide proof that he completed even 20 percent of the CPE requirements for his CPA license. Given that disparity, Petitioner has not demonstrated proof of a “good faith effort to comply” with the statute by any standard and especially not by a preponderance of the evidence.

8. Also, chapter 61H1-31, F.A.C., provides specific fee requirements to renew a license that is either current or delinquent, or to reinstate a license that has lapsed to a null and void status.

61H1-31.003 Renewal of Active and Inactive License Fee for CPA.

For individual active and inactive status licenses, the biennial renewal fee provided for in Section 473.305, F.S., shall be \$100.00, with the exception that for the 2018 and 2019 renewal periods, the fee shall be \$90.00. A special fee of \$5.00 per licensee shall be imposed upon initial licensure and at each renewal to fund efforts to combat unlicensed activity.

61H1-31.004 Delinquency Fee.

A delinquent status licensee shall pay a delinquency fee of \$25.00 when the licensee applies for active or inactive status.

61H1-31.006 Reactivation Fee.

The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of Rule 61H1-33.006, F.A.C., shall be required for reactivation.

61H1-31.015 Reinstatement of a Null and Void License Fee.

Upon approval of the board, reinstatement of a null and void license must be accompanied by an application fee of \$250.00. The completion of the requirements of Rule 61H1-33.006, F.A.C. shall be required for reinstatement.

9. Petitioner did not fail to pay or neglect the payment of legal fees for the license renewals and professional associations regarding his law license and law practice during the period in question. The fees, at most during the period in question, did not exceed \$380.00. Although “Petitioner maintained considerable assets” with his law practice, as noted in paragraph 19 of Petitioner’s proposed recommended order, Petitioner has not demonstrated by a preponderance of the evidence where his failure to comply with the mere payment of fees during the period in question constitutes a “good faith effort to comply” with the statute. Notably, Petitioner acknowledged in the same paragraph 19 that he tapped “into his savings” as need to make ends meet in his law practice; however, there is no indication he did the same to maintain his CPA license. The efforts were not the same and, as such, Respondent argues that the good faith requirement was not met.

10. Section 473.313(5), F.S., also states in relevant part that a null and void license may be reinstated if the individual has made good faith effort to comply “...but has failed to comply because of illness or unusual hardship.” Petitioner, in the Preliminary Statement of their proposed recommended order, referenced the following statement in the Amended Notice of Intent to Deny: “The Board acknowledged the hardship as identified by the Applicant; however, the Board denied the request for reinstatement due to the Applicant’s failure to establish ‘a good faith effort to comply’ as required by Section 473.313(5), F.S.” Petitioner, however, failed to establish by a preponderance of the evidence that the hardship(s) was “unusual” and caused him not to comply with the governing statute, section 473.313(5), F.S. According to the Merriam-Webster dictionary, “unusual” is defined as “not usual,” a synonym for which is “uncommon” or “rare.” *Feb 25, 2023. (Last viewed March 19, 2023).* Petitioner’s hardships, in material part, have been identified in paragraphs 18 through 22 of Petitioner’s proposed recommended order as compounding stress and anxiety resulting from:

- The suicide of Petitioner nephew in 2015, feelings about which may have exacerbated by the death of Petitioner's younger brother during a previous year
- Financial stress of maintaining his solo law practice with two office locations
- Excessive turnover in Petitioner's law practice
- Hurricane Irma (2017)
- COVID-19 pandemic
- Preparation and passage of the Certified Elder Law Attorney (CELA) exam (2019)

11. The burden remained with Petitioner to prove that those hardships were unusual in nature and, because of them, he failed to comply with the requirements of the statute. In the present case, the Petitioner successfully complied with the requirements to maintain his law license. He failed, however, to prove by a preponderance of the evidence why he failed to simultaneously comply with the requirements of his CPA license.

12. Petitioner was diagnosed with Generalized Anxiety Disorder (GAD) by a licensed clinical social worker, Katherine Best. The social worker, who was neither a physician nor deemed an expert in her field, concluded Petitioner suffered with GAD for most of his life; however, her diagnosis was not made until 2019. As noted in paragraph 17 of Petitioner's proposed recommended order, even though Petitioner is subject to spikes in anxiety under certain circumstances, the social worker classified Petitioner as "functioning," in spite of stress-inducing issues.

13. Petitioner acknowledged the following conditions that he and his social worker determined to be symptomatic of GAD:

- Distractibility
- Palms sweating
- Difficulty concentrating
- Pervasive feelings of worry
- Forgetfulness
- Procrastination due to an obsessive need for perfection
- Anxiety

14. Petitioner experienced, as noted in paragraphs 18 through 20 of the same, what he described as “extraordinary” levels of anxiety and depression since 2015 due to his nephew’s suicide in 2015, his younger brother’s suicide years prior, financial worries, Hurricane Irma, turnover in his law practice, and the pandemic.

15. Petitioner suggested that he did not allow his CPA license to lapse because he did not care about the license; however, Petitioner failed to show by a preponderance of the evidence that he sufficiently cared about the license. Despite his assertions of mental illness, GAD, or any other measure of impairment, Petitioner failed to show why his ability to concentrate, address the stress in his life, or keep up with his continuing education requirements did not interfere with his ability to maintain his law license to point of deficiencies. Petitioner’s assertion that he may have forgotten about the maintenance requirements of his CPA license, because that license was not “front of mind.” In the absence of medical, psychological, sociological, or expert evidence, the assertion resembles an excuse and not a reason for the lapse and neglect of his CPA license. To be clear, forgetting is not the standard required by statute; illness or unusual hardship is.

CONCLUSION

Petitioner failed to comply with the requirements of section 473.313, Florida Statutes, as required to maintain a current active CPA license. Petitioner failed to comply with section 473.313(5), Florida Statutes, and failed to specifically demonstrate a good faith effort for his lack of compliance. Further, Petitioner’s proposed recommended order failed to provide proof by a preponderance of the evidence to warrant reinstatement of Petitioner’s null and void license. Therefore, it is RECOMMENDED that the Florida Board of Accountancy enter a final order denying Petitioner’s request for reinstatement of a license he allowed to become null and void.

Respectfully submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Rachelle Munson
Rachelle Munson
Senior Assistant Attorney General
FL Bar No. 195243
Rachelle.Munson@myfloridalegal.com
Kara H. Aikens
Assistant Attorney General
FL Bar No. 1004405
Kara.Aikens@myfloridalegal.com

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6425

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to Dwight O. Slater, at dwright@guildaylaw.com, Guilday Law, P.A., 1983 Centre Pointe Blvd., Suite 200, Tallahassee, FL 32308, on this 20th day of March 2023.

/s/ Rachelle Munson
RACHELLE MUNSON