

STATE OF FLORIDA

**BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
ROBERT YARBOUGH**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/6/2019
File #	2019-01970

**ORDER GRANTING PETITION**

**VW 2018-254**

Petitioner, Robert Yarbough, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on December 27, 2018. The Notice of the petition appeared in the Florida Administrative Register on January 7, 2019, in Volume 45 Number 04. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on February 1, 2019, in Orlando, Florida. At the hearing on this matter, Petitioner was present. The Board was represented by Rachelle Munson, Assistant Attorney General. The petition is attached and incorporated by reference.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. **Rule 61H1-28.0052(1)(b), F.A.C.**, provides in part,

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed.

2. Petitioner passed the BEC portion of the CPA examination on March 20, 2017, and credit for that portion of the examination expired on September 20, 2018. Petitioner passed the AUD portion of the examination on December 18, 2017, and credit for that portion of the examination will expire on June 18, 2019. Petitioner passed the REG portion of the examination on March 7, 2018, and credit for that portion of the examination will expire on September 7, 2019. Petitioner passed the FAR portion of the CPA examination on December 10, 2018, and credit for that portion of the examination will expire on June 10, 2020.

3. During the 18-month window, Petitioner states that he worked full-time for a CPA firm, and experienced multiple family health issues that interfered with the preparation and scheduling of

the CPA exam and the loss of a sibling during the time of the exam. Petitioner also states that due to Hurricane Irma, the prometric center was closed causing him to lose a testing window. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of two (2) months and twenty (20) days beyond the eighteen months provided in the rule to retain the passing scores on the BEC portion of the examination, when he passed the fourth portion of the examination on December 10, 2018.

### **GROUND FOR APPROVAL**

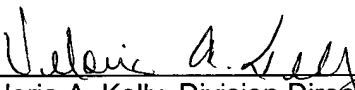
The Board determined the petition should be granted on the following grounds:

4. Petitioner established that the Board's full application of Rule 61H1-28.0052(1)(b), F.A.C., to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

5. Petitioner established that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, F.S.

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

**DONE AND ORDERED** this 27<sup>th</sup> day of February, 2019, by the  
Florida Board of Accountancy.

  
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Veloria A. Kelly, Division Director

### **NOTICE OF RIGHT TO HEARING**

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division Director of the Board, 240 Northwest 76<sup>th</sup> 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, a copy of which is enclosed, 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, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

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 **Robert Yarbough**, 2300 Canton Street, Apt. 1117, Dallas, Texas 75201, and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at [Rachelle.Munson@myfloridalegal.com](mailto:Rachelle.Munson@myfloridalegal.com) this 6<sup>th</sup> day of March, 2019.

Brandon M. Nichols

**RECEIVED**  
12/27/2018

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/27/2018
File #	

**Petition for Variance From Rule 61-H1-28.0052(1)(b)  
18 Month Rule**

**Petitioner Information:**

Robert Yarbough  
2300 Canton St. Apt #1117  
Dallas, TX 75201

Jurisdiction ID # 1130591  
Telephone: (508) 617-3602  
ryarbough70@hotmail.com

**Attorney Information:**

Not Applicable

**VW 2018-254**

**Applicable Portions of the rules:**

**61H1-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Competition of Examination, Transition Rules.**

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period which begins on the NASBA grade release date for the first test section (s) passed. In the event all four tests sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test sections(s) must be retaken.

**The citation to the statute the rule is implementing:**

Section 473.306 - Examinations

**Type of Action Requested**

The petitioner requests that the Board of Accountancy please waive Rule 61H1-28.0052(1)(b), FAC state above due to the following circumstances.

**Specific fact that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:**

The petitioner works full time at a certified public accounting firm for last four plus years (July 2014 – present) and two plus years of experience in internal auditing (October 2012 – February 2014). During this time the petitioner made every effort to take examinations while working 60+ hours per week during two peak busy seasons. The petitioner successfully passed his first section March 21<sup>st</sup>, 2017 which expired on September 20<sup>th</sup>, 2018

In addition, the petitioner has dealt with multiple family health issues that interfered with the preparation and scheduling of the CPA exam. During the time of examination the petitioner's brother passed, which resulted in the petitioner taking a trip to Clark County Nevada to assist his family. This emotional hardship played a major role in his lack of focus. Also in April and June of 2018 the petitioner's mother had severe heart attacks, resulting in the petitioner taking multiple trips to Clark County Nevada to assist in her recovery.

Lastly, the petitioner dealt with several hardships related to scheduling and score releases in 2017. In 2017, NASBA extended the second quarter score release schedule which created scheduling conflicts. Also In 2017, the petitioner was scheduled to take an examination on September 8<sup>th</sup>, 2017 which got canceled due to all Prometric centers in state closing on September 7<sup>th</sup> due to Hurricane Irma making landfall on September 10<sup>th</sup>. Consequently, the petitioner lost a full testing window.

**The reason why the variance requested would serve the purpose of the underlying statute:**

To the petitioner's knowledge, he has met all education requirements and is of good moral character. Therefore, petitioner establishes that the purpose of the underlying statute, Section 473.306 Florida Statutes, would be met by granting a variance from paragraph 61H1-28.0052 (b), F.A.C.

**Petitioner Statement**

To the petitioner's knowledge, he has met all the education requirements and is of good moral character.



Robert Yarbough