

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/13/2018
File #	2018-10101

**IN RE: PETITION FOR VARIANCE BY  
EMILIO BUSTILLO**

**VW 2018-204**

**ORDER DENYING PETITION**

Petitioner, Emilio Bustillo, filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code (FAC), on October 15, 2018. The Notice of the petition appeared in the Florida Administrative Register on October 4, 2018, in Volume 44 Number 194; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on November 9, 2018, in Tampa, Florida. At the hearing on this matter, Petitioner was present; the Board was represented by Rachelle Munson, Assistant Attorney General.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA).
2. Rule 61H1-28.0052(1)(b), FAC, 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."
3. Petitioner passed the BEC portion of the CPA examination on June 20, 2016, and credit for that portion of the examination expired on December 20, 2017. Petitioner passed the REG portion of the CPA examination on February 22, 2017, and credit for that portion of the examination expired on August 22, 2018. Petitioner passed the FAR portion of the examination on June 25, 2018, and credit for that portion of the examination will expire on December 25, 2019. Petitioner passed the AUD portion of the examination on September 10, 2018, and credit for that portion of the examination will expire on March 10, 2020.
4. During the 18-month window, Petitioner states that he experienced health problems which

led to have medically necessary surgeries on February 8, 2018 and July 10, 2018. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of six (6) months and five (5) days beyond the eighteen months provided in the rule to retain the passing score on the BEC portion of the examination until June 25, 2018, when he passed the FAR portion of the examination and to allow an extension of eight (8) months and (21) twenty-one days to retain the passing score on the BEC portion of the examination until September 10, 2018, when he passed the AUD portion of the examination.

### **GROUND FOR DENIAL**

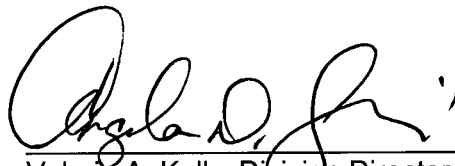
The Board determined the petition should be denied on the following grounds:

5. Petitioner failed to establish that the Board's full application of Rule 61H1-28.0052(1)(b), FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

6. Petitioner failed to establish that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, FS.

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

**DONE AND ORDERED** this 7<sup>th</sup> day of December, 2018, by the Florida Board of Accountancy.

  
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Veloria A. Kelly, Division Director

### NOTICE TO APPLICANT

The Petitioner may seek review of this Order, pursuant to Sections 120.569 and 120.57, FS, 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 the Petitioner disputes any material fact upon which the Board's decision is based, Petitioner may request a hearing before an administrative law judge pursuant to Section 120.57(1), FS; the petition must contain the information required by Rule 28-106.201, FAC, a copy of which is enclosed, including a statement of the material facts which are in dispute. If Petitioner does not dispute any material fact, Petitioner may request a hearing before the Board pursuant to Section 120.57(2), FS; the petition must include the information required by Rule 28-106.301, FAC, a copy of which is enclosed. If Petitioner requests a hearing, Petitioner has 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, FS, Petitioner is 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 **Emilio Gabriel Bustillo**, 2016 Chuli Nene, Tallahassee, Florida 32301, and to Kenneth J. 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 13<sup>th</sup> day of December, 2018.

Brandon M. Nichols

Jonathan Zachem, Secretary

Rick Scott, Governor

## MEMORANDUM

TO: Jonathan Zachem, Secretary  
Reginald Dixon, Chief of Staff

FROM: Paul Waters, Deputy Secretary

SUBJECT: Delegation of Authority

DATE: September 12, 2018



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I, Paul Waters, hereby delegate to Angela Francis, signature authority on behalf of Director Veloria Kelly due to a medical emergency. All documents signed on Director Kelly's behalf should have a copy of this Delegation of Authority attached.

PW/tr

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK Brandon Nichols  
Date 9/14/2018  
File #

**PETITION FOR VARIANCE FROM RULE 61HI-28.0052(1)(b)**

**18 Month Rule**

**Petitioner Information:**

Emilio Gabriel Bustillo  
2016 Chull Nene, Tallahassee, FL 32301  
(305) 972-2286

**RECEIVED**  
09/14/2018

**Attorney Information:**

Not Applicable

**VW 2018-204**

**Applicable Portions of the rules:**

61HI-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Completion 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) passes. In the event all four test sections of the CPA Examination are not passed within the eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

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

Section 473.306 - Examination

**Type of Action Requested:**

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

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

The petitioner has been working full-time in governmental auditing at the State of Florida Auditor General's office for four years. The petitioner passed the Business Environment and Concepts section on June 21, 2016, (credit expired December 20, 2017), passed the Regulation section on February 23, 2017, (credit expired August 22, 2018), and passed the Financial Accounting and Reporting section on June 27, 2018, demonstrating his dedication to pass all four parts within the required 18-month window. The petitioner unsuccessfully sat for the Auditing and Attestation section on October 11, 2016, March 9, 2017, April 5, 2017, August 28, 2017, and October 5, 2017 before passing the section as of August 22, 2018. During the 18-month window, the petitioner experienced health issues which required visits to numerous specialists before culminating in the petitioner requiring medically necessary surgery on February 8, 2018 and July 10, 2018. Additionally, after both surgeries there were numerous follow up visits and additional therapy. The amount of time away from work for medical

appointments, treatment and recovery prevented the petitioner from using vacation time to offset the disruption to the petitioner's study schedule. These issues did not allow adequate preparation time to successfully sit for the third and fourth section of the CPA examination within the required timeframe. (Petitioner can provide medical documentation if necessary.)

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

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

**Petitioner Statement:**

The petitioner seeks a permanent variance from Rule 61HI-28.0052(1)(b), F.A.C.