

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR WAIVER AND VARIANCE BY
ANDREW FRYE**

FILED	
<small>Department of Business and Professional Regulation</small>	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/9/2015
File #	2015-00243

ORDER GRANTING PETITION

Petitioner, Andrew Frye, filed a petition for a variance or waiver of Rules 61H1-33.006(2)(a) and 61H1-31.006, Florida Administrative Code (FAC) on September 24, 2014. The notice of the petition appeared in the Florida Administrative Weekly on October 15, 2014, in Volume 40 Number 201; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on December 5, 2014, in Tallahassee, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel. The Board was represented by Mary Ellen Clark, Senior Assistant Attorney General.

STATEMENT OF RELEVANT FACTS

VW 2014-355

The facts relevant to the petition are as follows:

1. Petitioner's license reverted to delinquent status on January 1, 2012. Petitioner submitted an application for reactivation under the 2012 Amnesty Provision on June 30, 2014, which was found to be deficient demonstration of completion of 4 CPE hours in board approved ethics.

2. Rule 61H1-33.006(2)(a), FAC, provides in part that, "each Florida certified public accountant, who became delinquent and desires to return their license to active status shall apply for such reactivation and demonstrate successful completion of the required number of continuing professional education hours. Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner: at least 20 hours in Accounting/Auditing, at least four hours in ethics, no more than 20 hours in behavioral, for a total of 120 hours."

3. Rule 61H1-31.006, FAC, "sets forth the application fee for reactivation of an inactive status license to active status as \$250.00."

4. Petitioner completed a total of 8 CPE hours in ethics, although only 4 were Board approved.

5. Petitioner is requesting a waiver or variance of Rule 61H1-33.006(2)(a), FAC, to the extent necessary for his license to be reactivated and for the Board to accept the 4 hours of CPE in ethics that were not Board approved. Petitioner is also requesting a waiver of Rule 61H1-31.006, FAC, in order to waive any additional application fee of \$250.00.

GROUND FOR APPROVAL

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

6. Petitioner established that the purpose of the accountancy continuing education statute, Section 473.312, Florida Statutes, would be met, in that he has completed the required hours.

7. Petitioner further established that the Board's full application of Rules 61H1-33.006(2)(a), FAC, and 61H1-31.006, FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

8. The Board reconsidered its August 15, 2014, denial of Petitioner's application for licensure for reactivation and granted the application.

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

DONE AND ORDERED this 6th day of January,
2015, by the Florida Board of Accountancy.

Veloria A. Kelly
Veloria A. Kelly, Division Director ✓

NOTICE TO APPLICANT

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 76th Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Boards 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 Andrew Frye, 15936 Vinola Drive, Montverde, Florida 34756; and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 9th day of January, 2015.

Brandon M. Nible

7006 0100 0004 5979 6297

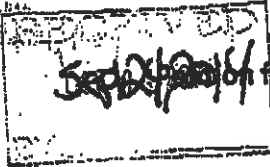
U.S. Postal Service		CERTIFIED MAIL RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com .			
OFFICIAL USE			
Postage	\$	Postmark Here	
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		
Sent To <u>Andrew Frye 290645</u>			
Street, Apt. No., or PO Box No.			
City, State, ZIP+4			
PS Form 3800, June 2002		See Reverse for Instructions	

10/01/2014 16:03 3523332588
09-24-14 13:48 FROM Accounting

CPA
407-621-6468

T-611 P000

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/24/2014
File #	



**Application for Variance from Rule 61H1-33.006 F.A.C. and Waiver of Application
Fee required by rule 61H1-31.006 F.A.C.**

Petitioner Information:

Andrew Frye
15936 Vinola Drive
Montverde, Florida 34756
Phone: 407-691-5907
Fax: 407-371-6264
Email: Andrew.frye@concordrents.com

VW 2014-355

Attorney Information

Not Applicable

Applicable Portion of the rules:

- 61H1-33.006 Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.
 - 2(c) Florida certified public accountants, who have been inactive for three or more reporting periods since maintaining a current/active license, shall satisfy the requirements of their most recent biennium plus 200 additional CPE hours.
- 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

The citation to the statute the rule is implementing:

Section 473.313(2) A license that has become inactive under subsection (1) or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements for reactivating a license are the prescribed by board rule and those of the most recent biennium plus one-half of the requirements in s. 473.312. Notwithstanding any other provision of this section, the continuing education requirements are 120 hours, including at least 30 hours in accounting-related and auditing related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent on June 30, 2014, if the Florida certified

accountant notifies the Board of Accountancy by December 31, 2014, or an intention to reactivate such a license and completes the reactivation by June 30, 2016.

Type of Action Required:

The petitioner requests that the Board of Accountancy please grant a variance to rules 61H1-33.006 FAC and 31.006 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:

I applied for reactivation under the 2012 amnesty provision as provided for in Section 473.313(2) Florida Statutes. The 2012 amnesty provision required completion, by June 30, 2014, of 120 hours of continuing professional education to include at least 30 hours of accounting/auditing subjects, not more than 30 hours of behavioral subjects, and at least 8 hours of board approved ethics. As a result of not completing four hours of board approved ethics by June 30, 2014 my application was deemed deficient and could not be approved.

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

Under the regular reactivation provision, rule 61H1-33.006 F.A.C., the licensee would be required to complete a total of 200 hours to include at least 4 hours in board approved ethics, and at least 40 hours in accounting and auditing subjects. I am petitioning the board for a one-time variance of this rule, which implements the provisions of section 473.313 F.S., to allow the reactivation of my license having completed 128 hours, because it would prove a hardship to my career and earnings ability to not have my license reactivated. I have demonstrated that I've met the purpose of the underlying statute even were I to be granted a variance from this rule because I completed 8 hours of ethics, however the 4 additional hours were not Florida approved. I would also like to request a permanent waiver of the \$250.00 reactivation application fee required by rule 61H1-31.006 F.A.C., which implements the provisions of section 473.305, because I previously paid the fee when I originally filed my application on 1/2/2013.

Petitioner Statement:

The petitioner seeks a onetime variance from the rules 61H1-33.006 F.A.C. and 61H1-31.006 F.A.C.