

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/16/2011
File #	2011-01881

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
JODY MICHALEC**

**VW 2010-696**

**ORDER**

Petitioner, Jody Michalec, filed a petition for a permanent variance from Rules 61H1-27.0041(1)(b), (c), and (2), Florida Administrative Code (FAC), on November 22, 2010. The notice of the petition appeared in the Florida Administrative Weekly on December 17, 2010, in Volume 36 Number 50; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy held on January 28, in Tampa, Florida. At the hearing on this matter, Petitioner was present. The Board was represented by Mary Ellen Clark, 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) who passed the fourth portion of the CPA examination on or about September 28, 2010.
2. Section 473.308(4), Florida Statutes (FS), provides that an applicant for licensure must show one year of work experience (applicants who passed the examination on or before June 30, 2010, would be exempt from this requirement). Rule 61H1-27.0041, FAC, specifies the manner in which the one year of work experience must be documented.
3. Rule 61H1-27.0041(1)(b), FAC, provides that "supervised" and "supervision" mean "[t]he subjection of the applicant, during employment, to oversight, guidance and evaluation by a supervisor who had the right to control and direct the applicant as to the

result to be accomplished by the work and also as to the means by which the result was to be accomplished.”

4. Rule 61H1-27.0041(1)(c), FAC provides that “supervisor” means, “either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB).”

5. Rule 61H1-27.0041(2), FAC, provides in part that “one year of work experience shall be held and understood to mean the rendition of services such as are customarily performed by full-time, regularly employed staff employees of a certified public accountant during the normal workweek as required by the employing certified public accountant, commencing after the completion of the educational requirements set forth in subsection 61H1-27.002(3), F.A.C.”

5. Petitioner has been employed by an accounting firm since she fulfilled the requirements to sit for the CPA examination. Petitioner’s direct supervisor is a licensed CPA in good standing whose license is currently on inactive status.

6. Petitioner seeks a permanent variance from Rule 61H1-27.0041(1)(b), (c), and (2), FAC, to the extent necessary for the Board to find that the supervision requirements have been met and that she has met the one year work experience requirement for licensure.

#### **Grounds for Approval**

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

7. Petitioner established that the purpose of the underlying statute, Section

473.308(4)(a), FS, would be met were she to be granted a variance from the rule based upon the following:

A. Petitioner 's experience was obtained under the supervision of a CPA;

B. Petitioner completed the 4<sup>th</sup> portion of the CPA examination just 90 days after the June 30, 2010 deadline.

8. Petitioner further established that the Board's application of Rules 61H1-27.0041(1)(b), and (2), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

It is therefore **ORDERED** that the petition be **GRANTED**.

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 March, 2011,

by the Florida Board of Accountancy.

  
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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 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), FS; your 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 you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), FS; your petition must include the information required by Rule 28-106.301, FAC, 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, FS, 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 Jody Michalec, 3066 70<sup>th</sup> Lane N., St. Petersburg, Florida 33710; and to F. Scott Boyd, Executive Director, Joint Administrative Procedures Committee, Room 120 Holland Building, Tallahassee, Florida 32399-1300, and Mary Ellen Clark, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 15<sup>th</sup> day of March, 2011.

*Brandon M. Nichols*

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<b>FILED</b>	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
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**Petition for Variance from Rule 61H1-27.0041**

**Petitioner information:**

Jody Michalec  
3066 70<sup>th</sup> Lane N.  
St. Petersburg, FL 33710  
(727) 420-0292

**RECEIVED**  
NOV 22 2010

**Attorney information:**

Not Applicable

BOARD OF ACCOUNTANCY

**Applicable portions of the rule:**

61H1-27.0041 (1)(b)(c), (2)

VW 2010-696

**61H1-27.0041 One Year of Work Experience.**

With the exception of an applicant who completes the requirements of Section 473.308(3), F.S., on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, an applicant must document one year of work experience as follows:

(1) Definitions. Within the context of this rule, the following definitions apply

(a) "Applicant" An applicant is a person who has met Florida's educational requirements for licensure and intends from the outset of the supervised experience to meet the supervised experience requirement for licensure.

(b) "Supervised" and "supervision" the subjection of the applicant, during employment, to oversight, guidance and evaluation by a supervisor who had the right to control and direct the applicant as to the result to be accomplished by the work and also as to the means by which the result was to be accomplished.

(c) "Supervisor." A supervisor is either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB).

(2) One year of work experience shall be held and understood to mean the rendition of services such as are customarily performed by full-time, regularly employed staff employees of a certified public accountant during the normal workweek as required by the employing certified public accountant, commencing after the completion of the educational requirements set forth in subsection 61H1-27.002(3), F.A.C. The experience must either average at least twenty (20) hours a week over no more than one hundred and four (104) weeks or average no more than forty (40) hours a week over no more than fifty-two (52) weeks. Reasonable vacation time and sick leave or other required absences may be permitted. The supervisor, in her or his report to the Department, shall certify that the applicant rendered such services as are customarily performed by full-time, regularly employed staff employees for a minimum of 2,000 hours gained over a period of not less than fifty-two (52) or more than one hundred and four (104) weeks. The sequence of the

experience is considered immaterial, that is, whether the experience was secured before or after taking the examination, or partly before the examination and partly after the examination, provided the two periods combined equal at least one year.

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

Section 473.308, Licensure

**Type of action requested:**

The petitioner requests that the Board of Accountancy please grant a variance from 61H1-27.0041 stated above due to the following circumstances.

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

I have been employed with the same company since I have fulfilled the requirements to sit for the CPA exam. My supervisors knew that I was working on obtaining my CPA license and my supervisor presented himself as a CPA. At the time when I requested him to sign my work experience form he revealed that he had let his licensure lapse. The CFO of the company let his CPA licensure lapse as well. Due to this unexpected turn of events, I contacted my previous employer, asked him to sign the form for me and submitted that work experience form to the Board of Accountancy. I was unaware that my work experience had to commence after I was eligible to sit for the exam so my application for licensure was denied. I request the acceptance of my work experience due to the facts that I was working under an actively licensed CPA prior to my eligibility to sit for the examination and I was led to believe I was working under an actively licensed CPA when I obtained my position with my current employer. In addition, the CPA who is the engagement partner that performs attest services for my company has offered to sign the work experience form on my behalf. He is technically reviewing my work during the review services that his firm provides. If this is acceptable, please notify me and I will submit a new work experience form with his signature.

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

The petitioner has met all of the education requirements, has passed all sections of the examination and is of good moral character. The petitioner also feels that she has substantially proven herself by performing the services such as are customarily performed by full-time, regularly employed staff accountants of a certified public accountant.

**Petitioner Statement:**

The petitioner requests a permanent variance from Rule 61H1-27.0041.