

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	7/16/2012
File #	

**IN RE: PETITION FOR VARIANCE BY
JOSE ALFARO, JR.**

NOTICE OF INTENT TO DENY

Petitioner, Jose Alfaro, Jr., filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code, on March 7, 2012. The notice of the petition appeared in the Florida Administrative Weekly on March 23, 2012, in Volume 38 Number 12; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on April 27, 2012, in Tampa, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel. 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).
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 November 30, 2011, and credit for that portion of the examination will expire on June 14, 2012. Petitioner sat twice for the REG portion of the CPA examination, but due to computer issues and damage to the computer system from a lightning strike, he was unable to complete the REG portion of the examination.

4. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow him an extension of time until December 14, 2012, to retain the passing score on the BEC beyond the eighteen months, until he can pass the remaining portions of the CPA examination.

GROUND FOR DENIAL

The Board determined that 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. Until he passes the remaining portions of the examination, the total amount of time beyond the eighteen months cannot be known.

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, Florida Statutes.

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

DONE AND ORDERED this 30th day of June, 2012,
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 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 Jose Alfaro, Jr., 3141 Whirl A Way Trail, Tallahassee, Florida 32309, 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, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 16 day of July, 2012.

Errett L. Proctor

FILED	
<small>Department of Business and Professional Regulation</small>	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/7/2012
File #	

PETITION FOR VARIANCE FROM RULE 61H1-28.0052

Petitioner Information:

Jose Abraham Alfaro, Jr.
3141 Whirl A Way Trail
Tallahassee, FL 32309
(850) 322-3834

Attorney Information:

Not Applicable

Applicable portion of the rule:

61H1-28.0052(1)(b), F.A.C.:

VW 2012-079

"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 test 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 section(s) must be retaken."

The citation to the statute that the rule is implementing:

Section 473.306, F.S. - Examinations

Type of action requested:

The petitioner requests that the Board of Accountancy please waive 61H1-28.0052(1)(b), F.A.C. (stated above) for his personal situation.

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

The petitioner sat for the REG portion of the CPA exam on May 31st, 2011. Due to system issues encountered at the testing center on the day of the exam, he was granted a retest at no additional cost by agreeing not to have his May 31st exam graded. As a result, the petitioner effectively lost the ability to test during the 2011 Q2 window.

The petitioner scheduled his retest for August 5th, 2011. Upon arriving at the testing center, he was told that lightning had struck the building and all systems were damaged. He was further instructed to contact Prometric in order to reschedule the exam for another date. Working in governmental accounting (CAFR compilation for the state, June 30th fiscal year end) inherently creates a "busy season" during the months of August-December. Due to the aforementioned "busy season," and limitations on the ability to take additional leave from work during this period, he was unable to reschedule his exam right away. As a result, the petitioner lost the ability to test during the 2011 Q3 window.

The petitioner passed the BEC portion of the exam in November 2010; it is set to expire June 14th, 2012. NASBA and Prometric addressed the issues encountered at the testing center by allowing for a retest in each instance; however, they are unable to address the expiration of the BEC score given the applicant's inability to test during two windows in 2011. The applicant requests to be granted an extension on the expiration of his BEC score to December 14, 2012 (two testing windows).

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

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

Petitioner statement:

The petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), F.A.C.



Issue 1 support: 1 of 5

Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Problems with recent examination

Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>
To: candidatecare@nasba.org

Fri, Jun 3, 2011 at 1:09 PM

Section ID: 4472522

Jurisdiction: Florida

Date of examination: 05/31/11

Dear NASBA representative,

I am writing this message to report a problem experienced during my examination at Prometric test center 0617 (Tallahassee, FL). I registered to sit for the Regulation (REG) section of the CPA exam with a confirmed test time of 12:30 PM on 05/31/11. I feel that the circumstances surrounding my examination prevented me from performing a level consistent with my knowledge/skills.

I'll begin by stating that the staff at the test center was excellent in keeping the flow of candidates steady and dealing with issues to the best of their ability. Upon arriving I was asked to put my items away in the locker and wait for the person ahead of me to complete the check in process. After having my pockets checked I was directed to the check in desk. The lady had trouble finding me in the system (I had previously sat for the BEC section of the exam at the same location) so she went through the fingerprint/photo process again. Upon entering the actual room I was assigned to station 13 and when she entered her launch code she immediately requested that I let her know if the computer was slow to load (she mentioned the system was acting "weird" that day). I sat there for a couple minutes before deciding to signal her since the system wasn't launching my exam. She came over quickly and moved me to the station next to it.

The next station (I believe it was 14) encountered the same issue and upon alerting her I was moved to another station, this time across from the previous two. After entering her launch code at the new station she had to go back to her desk as there was someone waiting to check in. After sitting close to five minutes at this station with nothing but a blank screen, I was approached by the second lady who asked me what issue I was having. I explained to her that I was on my third station without being able to access the exam. She then requested that I leave everything but my ID at the station and walk out with her to the check in area. As I got there a female walked out of the examination room right behind me and when asked how it went, she stated that she ran out of time and complained about having problems with the computer acting sluggish. Shortly thereafter it was decided that they would need to contact the help desk to troubleshoot the issue and I was asked to step out to the waiting area while the call took place.

I was asked back into the room after having my pockets checked a second time. I was then instructed to place my finger on the biometric scanner again and she stated that it worked (as in, the system actually found me this time). We then proceeded into the examination room and she entered her launch code. A couple of minutes later I was prompted to enter mine. It was then that I looked back at the clock and noticed the time, 1:05 PM.

Issue 1 support = 2 of 5

Although I arrived prior to my 12:30 PM appointment, I didn't actually start my exam until over half an hour after my scheduled time had passed. While this may seem insignificant at first, it certainly was a burden for me. The late start meant that my allotted time would now run through 4 PM rather than the expected original end time of 3:30 PM. I have personal commitments (picking up my son from school by 4 PM during the week) that were taken into account when scheduling this exam. As a result, I had to rush through the material in order to try to overcome the late start and still leave around 3:30 PM.

Notwithstanding my previous point, the testing process is stressful enough as it is that one cannot have extraneous issues arise at a professional testing center entrusted to provide efficient delivery of the exam and expect to perform to one's true ability. Switching to multiple stations, hearing others (including a proctor) complain about system issues, and ultimately being asked to step out for a lengthy period of time so that my problem could be worked out is not ideal under any circumstances. It is for these reasons, and I hope you agree, that I feel the testing environment was disrupted to such an extent that it was impossible for me to focus and perform at a level consistent with my preparation; therefore, I request that I be given the opportunity to re-test at no cost of my own. If you have any questions concerning my experience please feel free to reach me through any of the methods listed below.

Regards,

Jose Alfaro, Jr.
3075 Forsythe Park Court
Tallahassee, FL 32309
850-322-3834
jose.alfaro jr@gmail.com

Issue 1 support: 3 of 5



Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Problems with recent examination

Candidate Care <candidatecare@nasba.org>
To: "Jose Alfaro, Jr." <jose.alfaro.jr@gmail.com>

Wed, Jun 8, 2011 at 4:08 PM

Dear Mr. Alfaro,

Due to the difficulties that you experienced during your recent REG examination it has been determined that you are eligible for a free retest.

If you choose to accept this offer you will not receive your score from this examination and we will clear your eligibility so that you may retake this section.

However, if you decide to wait for your results and find that you did not pass, we cannot then offer the free retest. Knowing the results of your examination and then accepting the free retest would place you at an unfair advantage over other candidates.

Please let us know your decision at your earliest convenience.

Note: E-Mail is a non-secure method of communication. Please do not send personal/confidential information (Social Security number, credit card number, bank account information, etc.) via email as there is a risk involved with sending such information via non-secure communication method. If necessary, please contact us via phone or mail at the address indicated below.

Sincerely,
Bruce Costain
Candidate Care Department

National Association of State Boards of
Accountancy (NASBA)
160 Fourth Avenue North, Suite 700
Nashville, TN 37219

Phone: 615.880.4259
Fax: 615.880.4225
Email: candidatecare@nasba.org
www.nasba.org

IMPORTANT NOTICE TO CANDIDATES:

To prepare for each section of the Uniform CPA Examination candidates are responsible for reviewing the Uniform CPA Examination tutorial and sample tests. Failure to follow the directions provided in the tutorial and sample tests, including the directions on how to respond, may adversely affect candidate scores. The tutorial and sample tests are posted on the CPA Exam website at www.aicpa.org/cpa-exam under the heading Tutorial and Sample Tests.

For further information about what to expect on the day of your test, please visit: www.prometric.com/services/services/biometrics. Here you will find a description of the biometrics services used at the test sites, what to expect on test day, and much more.

1 of 2 Pg 2 was a continuation of e-mail signature.

Issue 1 support: 4 of 5



Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Problems with recent examination

Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>
To: Candidate Care <candidatecare@nasba.org>

Wed, Jun 8, 2011 at 4:25 PM

Dear Mr. Costain,

I appreciate your prompt reply and would like to accept the offer for a free retest. I understand the need to forego my examination score and request to have my eligibility reset. Please advise on how to proceed with scheduling a new time.

Regards,

Jose Alfaro, Jr.

On Jun 8, 2011 4:08 PM, "Candidate Care" <candidatecare@nasba.org> wrote:

- > Dear Mr. Alfaro,
- >
- >
- > Due to the difficulties that you experienced during your recent REG examination it has been determined that you are eligible for a free retest.
- >
- >
- > If you choose to accept this offer you will not receive your score from this examination and we will clear your eligibility so that you may retake this section.
- >
- >
- > However, if you decide to wait for your results and find that you did not pass, we cannot then offer the free-retest. Knowing the results of your examination and then accepting the free retest would place you at an unfair advantage over other candidates.
- >
- >
- > Please let us know your decision at your earliest convenience.
- >
- >
- > Note: E-Mail is a non-secure method of communication. Please do not send personal/confidential information (Social Security number, credit card number, bank account information, etc.) via email as there is a risk involved with sending such information via non-secure communication method. If necessary, please contact us via phone or mail at the address indicated below.
- >
- > Sincerely,
- > Bruce Costain
- > Candidate Care Department
- > -----
- > National Association of State Boards of
- > Accountancy (NASBA)
- > 150 Fourth Avenue North, Suite 700
- > Nashville, TN 37219
- > -----
- > Phone: 615.880.4259
- > Fax: 615.880.4225

1 of 5 Pg. 2-3 were a continuation of prior e-mails quoted.

Issue 1 support = 5 of 5



Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Problems with recent examination

Candidate Care <candidatecare@nasba.org>
To: "Jose Alfaro, Jr." <jose.alfaro.jr@gmail.com>

Thu, Jun 9, 2011 at 1:05 PM

Dear Mr. Alfaro,

Your eligibility for REG has been cleared. You may now contact Prometric and schedule your examination appointment using your same NTS number.

If you have any difficulties regarding this matter contact us immediately and we will assist you.

**Please "Reply" to this e-mail to assure us that it has been received. Thank you.

We appreciate your patience and professionalism during this resolution process. And, we regret any disturbance and disruption this may have caused and wish you the best as you continue in your professional development. If you have any further concerns or queries please let us know.

Note: E-Mail is a non-secure method of communication. Please do not send personal/confidential information (Social Security number, credit card number, bank account information, etc.) via email as there is a risk involved with sending such information via non-secure communication method. If necessary, please contact us via phone or mail at the address indicated below.

Sincerely,
Bruce Costain
Candidate Care Department

National Association of State Boards of
Accountancy (NASBA)
150 Fourth Avenue North, Suite 700
Nashville, TN 37219

Phone: 615.880.4259
Fax: 615.880.4225
Email: candidatecare@nasba.org
www.nasba.org

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For further information about what to expect on the day of your test, please visit: www.prometric.com/services/services/biometrics. Here you will find a description of the biometrics services used at the test sites, what to expect on test day, and much more.

NOTICE: This email message and all attachments transmitted with it may contain legally privileged and

1 of 2 Pg. 2 was a continuation of e-mail signature.

3/7/2012 1:15 PM



Issue 2 support = 1 of 2

Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Need NTS extended until November 30th

Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>
To: Candidate Care <candidatecare@nasba.org>

Mon, Oct 17, 2011 at 12:23 PM

Dear NASBA,

As requested, I am sending this email to ask for an extension on my expired NTS due to a problem encountered by the testing center on the day of my exam. To make a long story short, I have outlined the events leading to my request.

08/05/11:

- I was scheduled to sit for REG but upon arrival at the testing center we were told lightning had struck the building and their systems were down.
- We were given a ticket number and told that all we needed to do was call Prometric with that number and they would re-schedule our exam.

08/07/11:

- Expiration date on my original NTS (date fell on a Sunday)

09/29/11:

- I called Prometric (tracking #7908042) to inquire on what I would need to do in order to reschedule.
- Was told to contact NASBA for extension on NTS since they wouldn't be able to reschedule on an expired NTS.

Below you will find the information pertaining to my examination:

Name: Jose Alfaro, Jr.
 Location: Prometric Test Center 0617 (Tallahassee, FL)
 Ticket # provided by Prometric: 7678949
 Section: REG
 Section ID: 4472522
 Confirmation: 0000000064184013
 NTS: 4472522

As stated earlier, I need the extension through 11/30/11 as I plan to sit for it during that last week. I appreciate your help in this matter and please contact me with any questions.

Regards,

Jose Alfaro, Jr.
 3141 Whiteway Trail
 Tallahassee, FL 32309
 850-322-3834
jose.alfaro.jr@gmail.com

Issue 2 support = 2 of 2



Jose Alfaro, Jr. <jose.alfaro.jr@gmail.com>

Need NTS extended until November 30th

Candidate Care <candidatecare@nasba.org>
To: "Jose Alfaro, Jr." <jose.alfaro.jr@gmail.com>

Mon, Oct 24, 2011 at 11:46 AM

Your NTS has been extended to the end of Nov. Someone from Prometric will be contacting you shortly to assist you in rescheduling your exam.

Note: E-Mail is a non-secure method of communication. Please do not send personal/confidential information (Social Security number, credit card number, bank account information, etc.) via email as there is a risk involved with sending such information via non-secure communication method. Please contact us via phone or mail at the address indicated below.

Sincerely,
Perry Vernon
Manager, Candidate Care Department

National Association of State Boards of
Accountancy (NASBA)
150 Fourth Avenue North, Suite 700
Nashville, TN 37219

Phone: [615.880.4209](tel:615-880-4209)
Fax: [615.880.4225](tel:615-880-4225)
Email: candidatecare@nasba.org
www.nasba.org

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NOTICE: This email message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone ([615-880-4200](tel:615-880-4200)), and delete this message and all copies and backups thereof. Thank you.

From: "Jose Alfaro, Jr." <jose.alfaro.jr@gmail.com>
To: "Candidate Care" <candidatecare@nasba.org>
Sent: Monday, October 17, 2011 12:21:24 PM
Subject: Re: Need NTS extended until November 30th
(Quoted text hidden)

3141 Whirl A Way Trail
Tallahassee, FL 32309
jose.alfaro.jr@gmail.com
850-322-3834

RECEIVED
MAR 7 2012
BOARD OF ACCOUNTANCY

Fax

To: Florida Board of Accountancy	From: Jose Alfaro, Jr.
Fax: 352-333-2508	Pages: 10 (including cover sheet)
Phone: 850-467-1395	Date: 3/7/2012
Re: Petition for variance from rule 61H1-28.0052	cc:

• **Comments:** Please accept this fax as my petition for variance from rule 61H1-28.0052, F.A.C. I have included documentation to support and further explain the issues I encountered during the CPA examination process. I may be contacted via mail, phone, or email using the information I have included at the top of this page.