

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
 JACQUELYN KAY BOEHM**

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| FILED | |
| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 9/12/2013 |
| File # | 2013-05349 |

FINAL ORDER GRANTING PETITION

VW 2012-156

This matter came before the Board of Accountancy (hereinafter "the Board"), at a duly noticed public meeting held on August 16, 2013, in Tampa, Florida, on the request of Jacquelyn Kay Boehm, (hereinafter "Petitioner"), for a reconsideration of the denial of her petition, filed May 10, 2012, for a permanent variance from Rule 61H1-27.002(4)(a), Florida Administrative Code. The notice of the petition appeared in the Florida Administrative Weekly on June 15, 2012, in Volume 38 Number 24; no comments by interested persons were received. On August 3, 2012, the Board voted to deny Petitioner's petition and its Notice of Intent to Deny was filed on September 24, 2012. The Board voted to reconsider the matter, at which time Petitioner was present and not 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), pursuant to Section 473.308(7)(b)1.b, Florida Statutes, (FS) by endorsement of her 2011 Texas license. Petitioner's application was received in September, 2011, and was found to be deficient, in that she had not completed a sufficient number of hours of upper division accounting courses.

2. As part of her application review, Petitioner was denied upper division accounting credit for two courses, ACNT 1347 and ACNT 2330, that she completed at Mountain View

Community College, part of Dallas County Community College District; both of these courses were accepted by the Texas Board of Accountancy as upper division accounting courses.

3. Rule 61H1-27.002(4)(a), FAC, provides that upper division, as used in Rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.).”

4. Petitioner contended these two courses were upper division accounting courses, despite their being offered by a community college, and sought a permanent variance from Rule 61H1-27.002(4)(a), FAC, to allow their being counted toward her upper division accounting education requirement for licensure in Florida.

5. The Board’s Education Advisory Committee reviewed the Texas Board of Accountancy Community College Standards and the syllabi for the two courses and determined they should be classified as upper division accounting courses.

GROUND FOR APPROVAL

The Board determined that the petition for variance should be granted and Petitioner should be awarded upper division accounting credit for the two courses, ACNT 1347 and ACNT 2330, completed at Mountain View Community College, based upon the recommendation of its Education Advisory Committee and on the following grounds:

6. Petitioner established that the Board’s full application of Rule 61H1-27.002(4)(a), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

7. Petitioner established that, if she were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.308(3), Florida Statutes.

ORDER

Based on the foregoing, it is **ORDERED** that the prior order filed September 24, 2012, is **VACATED** and the petition is **GRANTED**.

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

DONE AND ORDERED this 5th day of September, 2013, by the Florida Board of Accountancy.



Veloria A. Kelly, Division Director

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Jacquelyn Kay Boehm, 4812 Springwater Circle, Melbourne, FL 32490; Gregory S. Hansen, Esquire, 2200 Front Street, Suite 301, Melbourne, FL 32901 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 12th day of September, 2013.

Brandon M. Nicks

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| U.S. Postal Service | | CERTIFIED MAIL RECEIPT | |
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| Sent To <u>Jacquelyn Kay Boehm</u> | | | |
| Street, Apt. No. or PO Box No. <u>4812 Springwater Circle</u> | | | |
| City, State, ZIP+4 <u>Melbourne, FL 32901</u> | | | |
| PS Form 3800, August 2006 | | See Reverse for Instructions | |

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
JACQUELYN KAY BOEHM**

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| FILED | |
| <small>Department of Business and Professional Regulation Deputy Agency Clerk</small> | |
| CLERK | Brandon Nichols |
| Date | 9/24/2012 |
| File # | 2012-05951 |

NOTICE OF INTENT TO DENY PETITION:

VW 2012-156

Petitioner, Jacquelyn Kay Boehm, filed a petition for a permanent variance from Rule 61H1-27.002(4)(a), Florida Administrative Code (FAC), on May 10, 2012. The notice of the petition appeared in the Florida Administrative Weekly on June 15, 2012, in Volume 38 Number 24; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy held on August 3, 2012, in Miami, 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) pursuant to Section 473.308(7)(b)1.b, Florida Statutes (FS) and endorsement of her 2011 Texas license. Petitioner's application was received in September, 2011, and she was found to be lacking several requirements for licensure including nine of the required hours of upper division accounting courses.
2. As part of her application review, Petitioner was denied upper division accounting credit for two courses she completed at Mountain View Community College, part of Dallas County Community College District, required for her Texas license.

3. Rule 61H1-27.002(4)(a), FAC, provides that "upper division, as used in Rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.)."

4. Petitioner contends these two courses were upper division accounting courses despite their being offered by a community college and seeks a permanent variance from Rule 61H1-27.002(4)(a), FAC, to allow their being counted toward her upper division accounting education requirement for licensure in Florida.

GROUNDS FOR DENIAL

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

5. Petitioner failed to establish that the purpose of the underlying statute, Section 473.308(3), FS, would be met were she to be granted a variance from Rule 61H1-27.002(4)(a), FAC.

6. Petitioner further failed to establish that the Board's application of Rule 61H1-27.002(4)(a), 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 **DENIED**.

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

DONE AND ORDERED this 13th day of September, 2012, by
the Florida Board of Accountancy.



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), 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 Jacquelyn Kay Boehm, 4812 Springwater Circle, Melbourne, FL 32490; 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 24th day of September, 2012.



Brandon M. Nicks

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| FILED | |
| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 5/10/2012 |
| File # | |

PETITION FOR VARIANCE FROM RULE 61H1-27.002(4)(a)**Petitioner Information:**

Jacquelyn Kay Boehm
4812 Springwater Circle
Melbourne, FL 32940

Attorney Information:

Not Applicable

Applicable Portion of the Rule:

61H1-27.002(4)(a) FAC

"Upper division, as used in Rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.)"

The Citation to the Statute the Rule is Implementing:

Section 473.306, FS – Examinations

Type of Action Requested:

The Petitioner request that the Board of Accountancy please waive 61H1-27.002(4)(a), FAC (stated above) for her personal situation.

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

The petitioner completed all education requirements required by the Texas State Board of Accountancy and received her Texas CPA license in March 2011. Two specific upper level courses, Government/Not-for-Profit Accounting and Federal Income Tax for Partnerships/Corporations were taken at Mountain View Community College, part of Dallas County Community College District. The petitioner attended these classes as part of the educational requirements to become eligible for the CPA Exam in Texas. The Texas State Board of Public Accountancy approves and recognizes these classes as upper level accounting classes as they meet the strict education requirements for CPA candidacy. These classes are equivalent in content and rigor to upper level accounting courses offered at a 4-year degree granting

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university. See Attachment #1, letter from Donna Hiller, Director of Qualifications with the Texas State Board of Public Accountancy.

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

To the petitioner's knowledge, these two accounting courses meet the educational requirements of upper level accounting courses. The petitioner is of good moral character.

Petitioner Statement:

The petitioner seeks a permanent variance from Rule 61H1-27.002(4)(a), FAC.