

VW 2015-235

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/18/2015
File #	

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**Petition for Variance or Waiver of Rule 61H1-28.0052(1)(b),
Florida Administrative Code**

COMES NOW, the Petitioner, CHARLES W. ANDREWS, by and through his undersigned counsel, hereby respectfully petitions the Board of Accountancy ("Board") for a variance or waiver of Rule 61H1-28.0052(1)(b), Florida Administrative Code, and pursuant to Rule 28-104.002, Florida Administrative Code, states:

1. Petitioner:

Charles W. Andrews

2. Counsel for Petitioner:

Nicole Rofe, esq.
The Law Office of Nicole Rofe, PLLC
1423 W Fairbanks Ave
Winter Park, FL 32789
Nicole@rofelaw.com
Ph: (407) 915-5447

3. Applicable Portions of the Rule:

61h1-28.0052(1)(b) Number of Sitzings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

With respect to the CPA Examination:

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.

4. Citation to the Statute:

Florida Statutes, Section 473.306.

5. Action Requested:

The Petitioner respectfully requests the Board of Accountancy to grant a permanent variance or waiver from Rule 61H1-28.0052(1)(b).

6. Justification for Waiver or Variance:

The Petitioner has undergone intense, severe health complications during the course of testing which demonstrate a violation of principles of fairness that would justify a waiver or variance for the Petitioner.

On December 4, 2015 the Petitioner experienced his first onset of lower back pain. When he woke up the next morning on December 5, 2015 to get ready for work at PricewaterhouseCoopers LLP in Chicago where he is an Experienced Associate, the pain had only worsened. He suffered through the pain and made it to work, but was relieved from work because of his apparent discomfort. This incident was witnessed by Katie King, the Senior Manager at PricewaterhouseCoopers. Please see the Memorandum of Katie King, attached to this Petition marked as Exhibit 'A' for identification purposes. On this same date of December 5, 2014, the Petitioner sought medical attention for his lower back pain at the Northwestern Memorial Hospital Walk-In Clinic. The Walk-In Clinic prescribed him muscle relaxers and pain relievers (which only provided him with minor relief) and told him to follow up with a primary care physician. Please see the Medical Records for the visit to Northwestern Memorial Hospital Walk-In Clinic on December 5, 2014 attached to this Petition marked as Exhibit 'B' for identification purposes.

On December 13, 2014, the Petitioner admitted himself to the Northwestern Memorial Hospital Emergency Room. His pain had exacerbated and had spread down the right side of his body and was experiencing numbness in his lower extremities. The doctors at Northwestern Memorial Hospital Emergency

Room explained to the Petitioner that he displayed signs of Sciatica (“Lumbar Radiculopathy”), prescribed him an anti-inflammatory, muscle relaxer, pain relievers, and steroids, and was told to make an appointment with a doctor in their Internal Medicine Clinic for possible MRI. Please see the Medical Records for the visit to Northwestern Memorial Hospital Emergency Room on December 13, 2014 attached to this Petition marked as Exhibit ‘C’ for identification purposes.

On January 10, 2015, still in pain, the Petitioner went to see Dr. Jay Hildebrand of the Internal Medicine Clinic of Northwestern Memorial Hospital for further testing and diagnostics. This was the first appointment he could get with a doctor in the Clinic. During this visit the Petitioner got an MRI on the sacral lumbar spine. Dr. Hildebrand told Mr. Andrews to get a lot of rest and avoid any lifting or exercise. He was also told symptoms would continue to occur for 4-6 months and that rehabilitation was likely in the future. Two days later when the results were received, the findings included but were not limited to: disc bulges with right paracentral disc protrusion in L4-5, L5-S1. Please see the Medical Records and MRI results for the visit to Northwestern Memorial Hospital Internal Medicine Clinic on January 10, 2015 attached to this Petition marked as Exhibit ‘D’ for identification purposes.

On February 2, 2015 the Petitioner went to see Dr. Wellington Hsu, an Orthopaedic Specialist. Dr. Hsu issued another MRI on his lumbar spine which demonstrated an L5-S1 with large posterior lateral disc herniation that has migrated superiorly and has affected his L4-L5. Over the past six weeks, Mr. Andrews had improved with respect to the pain. Dr. Hsu recommended physical

therapy for Mr. Andrews. Please see the Medical Records and MRI results for the visit to Northwestern Memorial Hospital Internal Medicine Clinic on February 2, 2015 attached to this Petition marked as Exhibit 'E' for identification purposes.

On January 10, 2015, the Petitioner took the Financial Accounting and Reporting exam and barely missed a passing score. The Petitioner missed the score by two points as heavily related to his physical condition as it was at its peak worst during the first six weeks from December 5, 2014 through January 14, 2015. If his health was intact and he had passed this exam, he would have been well within the 18 month score expiration window (13 months).

On May 22, 2015, the Regulation score expired. On July 9, 2015, the Petitioner retook the Financial Accounting and Reporting exam and passed, within six weeks of score expiration. By the requirements of the CPA, the 18-month window begins when the score is *released* and covers any exams *taken* prior to 18 months later. Thus, the above details, which are clearly evidenced by their accompanying medical records, easily cover this period of six weeks.

Pursuant to Section 120.542(2), Florida Statutes, the purpose of the underlying statute – Section 473.306 – has been achieved since the Petitioner has met all education requirements and is of good moral character. The Petitioner respectfully requests that the Board grant a variance from the strict application of Rule 61H1-28.0052(1)(b).

Absent this waiver or variance, the Petitioner will unnecessarily be required to incur and expend resources, time, and effort to retake the CPA examination which he has already passed, which resources, time and effort would

be better directed toward a CPA license so that he may provide skilled accounting services to the residents of his state.

Based on the foregoing, the Petitioner, Mr. Charles W. Andrews, respectfully requests that the Board grant a permanent waiver or rule variance.

Respectfully submitted this 17 day of September, 2015.


Nicole Rofe

Counsel for Petitioner
1423 W Fairbanks Ave
Winter Park, FL 32789
Ph: (407) 915-5447

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
CHARLES W. ANDREWS**

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/23/2015
File #	2015-09729

VW 2015-235

ORDER GRANTING PETITION

Petitioner, Charles W. Andrews, filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code (FAC), on September 18, 2015. The Notice of the petition appeared in the Florida Administrative Register on September 25, 2015, in Volume 41 Number 187; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on November 6, 2015, in Orlando, Florida. At the hearing on this matter, Petitioner was represented by Nicole Rofé, Esquire, and the Board was represented by Mary Ellen Clark, Senior 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 REG portion of the CPA examination on November 21, 2013, and credit for that portion of the examination expired on May 21, 2015. Petitioner passed the BEC portion of the examination on November 3, 2014, and credit for that portion of the examination will expire on May 3, 2016. Petitioner passed the AUD portion of the examination on August 1, 2014, and credit for that portion of the

examination will expire on February 1, 2016. Petitioner passed the FAR portion of the CPA examination on August 3, 2015, and credit for that portion of the examination will expire on February 3, 2017.

4. Prior to passing the fourth portion of the CPA examination, Petitioner experienced unexpected severe health complications that prevented his completing the examination timely. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of three months beyond the eighteen months provided in the rule to retain the passing score on the REG portion of the examination through August 3, 2015, when he passed the fourth portion of the examination.

GROUNDS FOR APPROVAL

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

5. Petitioner established 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 established 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 19th day of November, 2015,
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), 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 to Nicole Rofé, Attorney for Petitioner, The Law Office of Nicole Rofe PLLC, 1423 W Fairbanks Ave., Winter Park, Florida 32789, and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 23rd day of November, 2015.

Brandon M. Nichol

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PS Form 3800, August 2006		See Reverse for Instructions	