

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/1/2015
File #	

**AMENDED PETITION FOR VARIANCE FROM RULE 61H1-33.006**  
**Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active**  
**Licenseses**

**Petitioner Information:**

Lewis Craig Simmons  
630 25<sup>th</sup> Ave. N  
St Petersburg, FL 33704  
Tel: 303-718-7420  
Fax: 251-287-6960  
Email: [lcraigs@aol.com](mailto:lcraigs@aol.com)



**Attorney Information:**

Not Applicable

**VW 2015-259**

**Applicable Portions of the rules: 61H1-33.006 (2)(c) Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licenseses.**

- (1) Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the Department Form DBPR CPA 5011-1 – Request for Change of Status, hereby incorporated by reference effective 7-23-06; copies of the form may be obtained from the Board office. However, if a license is delinquent on January 1 for failure to comply with Rule 61H1-33.003, F.A.C., through failure to report compliance with continuing professional education requirements by the immediately prior December 31<sup>st</sup>, a Florida certified public accountant may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed, paying the fees required by Rules 61H1-31.003, 31.004 and 31.006 F.A.C., by March 15 of the same year of the delinquency.
- (2) Each such application shall demonstrate successful completion of the required number of continuing professional education hours.
- (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 in the following manner:

Accounting/Auditing	Ethics	Behavioral	Total Hours
At least 40 hours	At least 4 hours	No more than 20 hours	280 Hours

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

This rule is implementing Section 473.313 FS.

**The citation to the statute the rule implementing (continued):**

**473.313 Inactive status.—**

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(2) A license that has become inactive may be reactivated under s. ~~473.311~~ upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The minimum continuing education requirements for reactivating a license shall be those 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 on June 30, 2009, if the Florida certified public accountant notifies the Board of Accountancy by December 31, 2009, of an intention to reactivate such a license and completes such reactivation by June 30, 2011.

(3) Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(4) Notwithstanding the provisions of s. ~~455.271~~, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please grant a variance for Rule 61H1-33.0006 (2)(c), FAC stated above and reduce the amount of continuing education hours required to reactivate my license, to 120 hours, due to the following circumstances:

In December 2009, the petitioner responded to a notice he received in July 2009 advising him that he could change the status of his license from Inactive to Active status by completing 120 hours of CPE. In his response, and in accordance with the request in the notice, he stated that he intended to complete the required number of hours within the time period mandated. As a result of complications from Hepatitis C, it was determined that the petitioner had developed a malignant lesion on his liver. Consequently, in July 2010, he was compelled to endure a liver transplant. Post-transplant, due to the immune suppressant medicine required to avoid rejection of the transplanted organ, the Hepatitis C reoccurred and voraciously attacked the new liver. The petitioner was gravely ill for most of the next four years and struggled from day to day to maintain adequate sustenance. As a result of the extended illness, he allowed his certificate lapse in to a "Null and Void" status. During 2014, as a result of newly discovered drug therapy, the petitioner was able to clear the virus from his system. As of August 2015 it was determined he was free of cancer and the Hepatitis C virus.

I understand that there have been additional reenactments of Section 473.313, the most recent of which called for Board notification by December 31, 2014. As a result of the medical condition and circumstances described above, petitioner was unaware and consequently unable to respond by the December 31, 2014 deadline. He was focused mentally and physically on recovery from his grave illness.

**Specific fact that demonstrates a violation of the principles of fairness that would justify a variance for the petitioner:**

The petitioner has always maintained a stellar record and reputation as a financial and accounting professional. He has kept up with his CPE in the past and fully intended completing the CPE hours required to upgrade his license from Inactive to Active. If he had not become ill for an extended period of time, there would have not been any problem completing the continuing education required by either the June 30, 2011 or the December 31, 2014 deadlines mandated in s. 473.313.

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

The petitioner is sure that with additional time and a reduction of the continuing education hours, he will be able to complete the required continuing professional education. The petitioner failed to comply with s. 473.313 due to unusual hardship caused by illness.

**Petitioner Statement:**

The petitioner seeks a one time variance from Rule 61H1-33.006 (2)(c), F.A.C.

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
LEWIS CRAIG SIMMONS**

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<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>2/25/2016</b>
File #	<b>2016-01580</b>

**VW 2015-259**

**ORDER**

Petitioner, Lewis Craig Simmons, filed an amended petition for a permanent variance from the requirements of Rule 61H1-33.006(2)(a), Florida Administrative Code (FAC), on December 1, 2015. The notice of the petition appeared in the Florida Administrative Register on December 10, 2015, in Volume 41 Number 238; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on January 28-29, 2016, in Tampa, Florida. At the hearing on this matter, Petitioner was present. 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 was a licensed certified public accountant whose license became Null and Void on January 1, 2010, for failing to timely complete 120 continuing professional education (CPE) hours; Petitioner has filed an application to reinstate his license pursuant to Section 471.313(5), Florida Statutes (FS).

2. Petitioner experienced medical complications requiring a liver transplant in 2010 and was gravely ill for four years. During 2014, with the help of a newly discovered drug therapy, Petitioner recovered sufficiently to resume his professional practice, but not in time to avail himself of the CPE amnesty provisions provided in Section 473.313(2), FS (allowing reactivation of a license in inactive or delinquent status on June 30, 2014, by

notification to the Board office by December 31, 2014, of the intent to complete 120 hours of CPE by June 30, 2016).

3. Rule 61H1-33.006(2), FAC, provides that an applicant for reactivation must complete a specified number of CPE hours in addition to the regular renewal requirements.

4. Petitioner seeks a permanent variance from Rule 61H1-33.006(2), FAC, to the extent necessary for the 280 CPE hours required for reinstatement of his license to be reduced to 120.

### **GROUND FOR APPROVAL**

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

5. Petitioner established that the purpose of the underlying statutes, Sections 473.312 and 473.313, Florida Statutes, would be met were he to be granted a variance from the rule. Petitioner must complete 120 hours of CPE by June 30, 2016, to be eligible for his license to be reinstated.

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

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 23<sup>rd</sup> day of February, 2016, 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 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), 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 Lewis Craig Simmons, 630 25<sup>th</sup> Avenue N., St. Petersburg, Florida 33704; 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 25<sup>th</sup> day of February, 2016.

  
Brandon M. Nibbel