

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/22/2018
File #	2018-01335

**IN RE: PETITION FOR VARIANCE BY  
JIM TAUBENFELD**

**VW 2017-232**

**ORDER GRANTING PETITION**

Petitioner, Jim Taubenfeld, filed a petition for a permanent variance from the requirements of Rule 61H1-33.006(2)(c), Florida Administrative Code (FAC), on January 9, 2018. The notice of the petition appeared in the Florida Administrative Register on January 12, 2018, in Volume 44 Number 09; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on February 2, 2018, in Orlando, 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's license reverted to delinquent status on December 31, 2007. Petitioner submitted an application for reactivation under the Section 473.313(2), Florida Statutes 2014 Amnesty Provision on June 29, 2016. He was provided notice on July 8, 2016, that his application was found to be deficient of evidence of the completion of 4 CPE hours in board approved ethics. Petitioner's 2016 reactivation application expired and he submitted a new reactivation application on December 26, 2017. Petitioner is a resident of Puerto Rico and, since submission of his earlier reactivation application, he has been severely impacted by Hurricane Maria.
2. Petitioner states that he completed the 120 hours of continuing professional

education required, but erroneously included an ethics course that was not pre-approved by the National Association of State Boards of Accountancy Quality Assurances Services program.

3. Rule 61H1-33.006(2)(a), FAC, provides in part that, "each Florida certified public accountant, who became delinquent and desires to return their license to active status shall apply for such reactivation and demonstrate successful completion of the required number of continuing professional education hours. Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner: at least 20 hours in Accounting/Auditing, at least four hours in ethics, no more than 20 hours in behavioral, for a total of 120 hours."

4. Petitioner is requesting a waiver or variance of Rule 61H1-33.006(2)(a), FAC, to the extent necessary for his license to be reactivated and for the Board to accept the 4 hours of CPE in ethics that were not Board approved.

#### **GROUND FOR APPROVAL WITH CONDITIONS**

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

5. Petitioner shall be granted the variance from the rule if he provides proof of completion of four (4) hours of a Board-approved ethics course within 30 days of the filing of this order.

6. 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 based upon the following:

(A) Petitioner is a resident of Puerto Rico and was impacted by Hurricane Maria.

(B) Petitioner made a good faith effort to timely complete all the required hours but one of the two ethics courses he completed was not Board-approved.

7. 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 Rule 61H1-33.006(2)(c), F.A.C.

8. Petitioner further established that the Board's application of Rule 61H1-33.006(2)(c), 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 with the condition** that Petitioner provide proof of completion of four (4) hours of a Board-approved ethics course within 30 days of the filing of this order.

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

**DONE AND ORDERED** this 19<sup>th</sup> day of February, 2018,  
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), 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 Jim Taubenfeld, Urb. La Colina B35 Calle B, Guaynabo, Puerto Rico 00969; 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 22<sup>nd</sup> day of February, 2018.

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

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/9/2018
File #	

**Petitioner Information:**

**Name:** Jim Taubenfeld  
**Address:** Urb. La Colina B35 Calle B  
Guaynabo, Puerto Rico 00969  
**Phone #:** 787-552-0900  
**Application #:** 323089

**RECEIVED**

**JAN 09 2018**

**VW 2017-232**

**Attorney Information:**

Not Applicable

**DBPR Agency Clerk**

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

- (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 and 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.

- (a) Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner:

Accounting/Auditing	Ethics	Behavioral	Total Hours	
At least 20 hours	At least 4 hours	No more than 20 hours	120 hours	

**The citation to the statute the rule is implementing: Section 473.313(2) of the Florida Statutes.**

**61H1-33.006(a) Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.**

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please grant a variance for Rule 61H1-33.006(a) FAC Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.

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

I completed the 120 hours of continuing professional education required, but erroneously included an ethics course which was not pre-approved by the National Association of State Boards of Accountancy Quality Assurance Services program. The letter received from the Florida Department of Business and Professional Regulation was misunderstood and the course correcting the deficiency was not completed in time. I ask that the waiver for the deficiency be granted because reactivation outside the amnesty program is a result too harsh for the deficiency at hand. In addition, the course not pre-approved was informative and beneficial.

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

The purpose of the statute is for Certified Public Accountants to continue their education in order to maintain themselves as competent professionals. I believe I have achieved that purpose in the area of ethics and other areas associated with the practice of Accountancy, despite the deficiency in the 4 hour ethics course.

**Petitioner Statement:**

The petitioner seeks a permanent variance from Rule 61H1-33.006(a) F.A.C.