

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE OR WAIVER BY  
BENJAMIN KINCAID**

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/6/2019
File #	2019-01967

**VW 2018-248**

**NOTICE OF INTENT TO DENY PETITION**

Petitioner, Benjamin Kincaid, filed a petition for a permanent variance from the requirements of **Rule 61H1-27.001(5), Florida Administrative Code (F.A.C.)**, on December 10, 2018. The notice of the petition appeared in the Florida Administrative Register on January 4, 2019, in Volume 45 Number 03. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on February 1, 2019, in Orlando, Florida. At the hearing on this matter, Petitioner was not present, and the Board was represented by Rachelle Munson, Assistant Attorney General. The petition is attached herein and incorporated by reference.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure by endorsement pursuant to Section 473.308(7), Florida Statutes (F.S.). Initial review of his application revealed that he did not meet the education requirements of Section 473.306, F.S., specifically that he was deficient 15 semester or 22 quarter hours of graduate-level course work from an accredited institution.

2. Petitioner received a Bachelor of Science in Business with a double concentration in Accounting and Finance from Pensacola Christian College in May 2012, which is not accredited pursuant to Rule 61H1-27.001, F.A.C. Petitioner passed the CPA

examination in Indiana and became licensed in Indiana on July 11, 2014.

**3. Rule 61H1-27.001(5), F.A.C. (2018), provides that**

A graduate of a four-year degree granting institution not accredited at the time the applicant's degree was received or at the time of filing application will be deemed to be a graduate of a four-year accredited college or university course provided an accredited college or university as defined by subsections 61H1-27.001(1) and (2), F.A.C., accepts applicant's non-accredited baccalaureate degree and the applicant satisfactorily completes at least 15 semester or 22 quarter hours, or the equivalent, in post-baccalaureate education at the accredited institution of which at least 9 semester or 13 quarter hours, including at least 3 semester or 4 quarter hours in taxation; or the equivalent, shall be in accounting. Elementary accounting subjects, or courses equivalent to elementary accounting, cannot be used to satisfy the requirements of this rule. Elementary accounting subjects include principles of financial and managerial accounting courses even if they are covered in a three-course sequence, are titled "introductory," "fundamentals," or "principles," and even if they are offered at the graduate level.

4. Petitioner seeks a permanent variance from the requirements of Rule 61H1-27.001(5), F.A.C., to the extent necessary for the Board to determine he has met the educational requirements for licensure.

**GROUND FOR DENIAL**

The Board determined that based on the requirements of Rule 61H1-27.001(5), F.A.C., the petition should be denied on the following grounds:

5. Petitioner failed to establish that the purpose of the underlying statute, Section 473.306, F.S., would be met were he to be granted a variance from Rule 61H1-27.001(5), FAC.

6. Petitioner further failed to establish that the Board's application of Rule 61H1-27.001(5), F.A.C., to his circumstances including his failure to attend an accredited college,

would violate principles of fairness and impose a substantial hardship on him.

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 26<sup>th</sup> day of February, 2019,  
by the Florida Board of Accountancy.

  
Veloria A. Kelly, Division Director ✓

#### **NOTICE OF RIGHT TO HEARING**

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), 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.

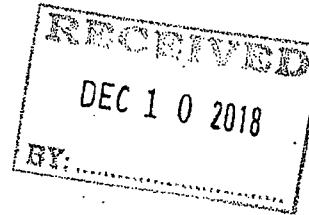
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified mail to **Benjamin Kincaid**, 212 Water Oaks Loop, Santa Rosa Beach, Florida 32459; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com this 6<sup>th</sup> day of March, 2019.

Brandon M. Nichols

VW 2018-248

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/10/2018
File #	



December 4, 2018

Florida Board of Accountancy  
240 NW 76th Drive, Suite A  
Gainesville, FL 32607

RE: CPA Licensure Application  
Application Number: 374081; Profession: 0101  
Petition for Permanent Variance from Rule 61H1-27.001(5)(a), F.A.C.

To Whom It May Concern:

I received a deficiency notice dated April 25, 2018 from the Florida Department of Business & Professional Regulation in regards to my application for licensure as a Certified Public Accountant in the State of Florida. In part, the deficiency notice stated that I was "[d]eficient 15 semester or 22 quarter hours of graduate-level course work from an accredited institution, of which six (6) semester or nine (9) quarter hours must be in accounting and three (3) semester or four (4) quarter hours must be in taxation (see Rule 61H1-27.001(5)(a), F.A.C.)". As discussed in more detail below, I hereby file this Petition for Permanent Variance from the requirements of Rule 61H1-27.001(5)(a), F.A.C.

Background Summary

As a brief background, I received a Bachelors of Science in Business with a double concentration in Accounting and Finance from Pensacola Christian College in May 2012. My cumulative grade point average and major grade point average from Pensacola Christian College was 3.93 and 4.00, respectively. Although Pensacola Christian College is accredited through the Transnational Association of Christian Colleges and Schools, it is not considered to be an accredited school under Rule 61H1-27.001, F.A.C. Thus, Rule 61H1-27.001(5)(a), F.A.C. is applicable to my application.

After graduation from Pensacola Christian College, I was subsequently employed as a staff accountant by Carr, Riggs & Ingram, LLC, which is currently ranked among the top 19 public accounting firms in the United States of America. Due to the State of Florida's accreditation requirement and upon advice from Pensacola Christian College, I applied and took the American Institute of Certified Public Accountants ("AICPA") Uniform Certified Public Accountant examination via the State of Indiana. After successful completion of the exam, the State of Indiana issued a Certified Public Accountant License to me on July 11, 2014.

Additionally, I have since received the Certified Fraud Examiner certification from the Association of Certified Fraud Examiners, the Certified Valuation Analyst certification from the National Association of Certified Valuators and Analysts and the Certified in Financial Forensics certification from the AICPA. I have also continued to meet or exceed the continuing professional education requirements set forth by the AICPA, ACFE and other accredited or regulatory bodies that I am a

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part of. Further, during my employment with Carr, Riggs & Ingram, LLC, I have been promoted to the manager level and I have also been appointed to the Florida Institute of Certified Public Accountant's Valuation, Forensic Accounting & Litigation Committee.

Summary of Relevant Statutes, Regulations and Rules

Florida Statute 473.304 establishes that the Florida Board of Accountancy ("Board") shall adopt rules, pursuant to Florida Statutes 120.536(1) and 120.54, to implement the provisions of Florida Statute 473. Florida Statute 120.536(1) further provides the Board with the authority to implement and interpret the specific powers and duties conferred by Florida Statute 473.

Additionally, Florida Statute 120.542 states that "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances...Agencies are authorized to grant variances and waivers to requirements of their rules". This statute also provides that variances should be granted when the individual demonstrates that the purpose of the underlying statute has been achieved by other means and when strict application of the rule would create substantial hardship for the individual or violate the principles of fairness. Substantial hardship is defined to include demonstrated economic, legal or other types of hardship. Principles of fairness is also defined that the application of the rule to an individual would result in the individual be affected significantly different from the way it affect other similar situated individuals.

It appears that legislative intent for licensure certified public accountants is contained in Florida Statute 473.301. This statute provides that the purpose/legislative intent is to assure the minimum competence of practitioners and to protect the public from dishonest practitioners.

Satisfaction of Statute's Purpose

It appears that the Board adopted Rules 61H1-27.001 and 61H1-27.001(5)(a), F.A.C. (e.g., higher level education from regionally accredited institutions) to help ensure the competence of practitioners seeking to sit for the CPA exam or licensure in the State of Florida. As supported by the enclosed information from my alma mater, Pensacola Christian College specifically chose to be accredited by a national accrediting body, Transnational Association of Christian Colleges and Schools, in order to help maintain its faith based education environment. However, this national accreditation body is comparable to regional accreditation bodies.

Pensacola Christian College's education programs provide its alumnus with comparable or better education to surrounding regionally accredited colleges and universities. This is supported by the *NASBA Report of the CPA Exam, Candidate Performance on the Uniform CPA Examination for 2017*, which found that Pensacola Christian College was one of ten institutions whose graduates had a pass rate in excess of 50%. Pensacola Christian College graduates also ranked eighth out of twenty institutions for first-time testing events. Additionally, this is supported by the fact that hundreds of regionally accredited colleges and universities have accepted Pensacola Christian College's credits and degrees. Pensacola Christian College also indicated to me that Board staff had previously stated that they would likely accept Pensacola Christian College's education as comparable to regionally accredited institutions in submitted variance requests.

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Furthermore, Steve Riggs, one of the founders of my firm and a former chair of the Board, has written the enclosed letter in support of my petition. In this letter, Mr. Riggs indicates that accounting graduates from Pensacola Christian College appear to have comparable education to that of graduates from regionally accredited institutions; such as, the University of West Florida, Florida State University, etc. Mr. Riggs's firm, Carr, Riggs, & Ingram, LLC, also recruits at Pensacola Christian College on a regular basis. Mr. Riggs further states that he believes my education and experience more than satisfies the purpose and intent of the Florida statutes governing licensure of certified public accountants in the State of Florida.

Therefore, my education from Pensacola Christian College satisfies the purpose and intent of the Florida statutes governing licensure of certified public accountants in the State of Florida. Additional education from a regionally accredited institution would not further the purpose and intent of the Florida statutes and would merely delay the process.

Variance Reasoning


My petition for permanent variance of these rules is consistent with the principles of fairness and substantial hardship exceptions established by Florida statutes. This is supported by the professional and financial hardships (i.e., cost of a masters program at a regionally accredited institution, potential time off work; potential decelerated career advancement, etc.) I would meet in satisfying the requirements of Rule 61H1-27.001(5)(a), F.A.C. Additionally, rejection of Pensacola Christian College's alumnus as compared to alumnus from comparable regionally accredited institutions would appear to violate the principles of fairness.

I also believe that my petition for permanent variance is consistent with the legislative intent and statutory provisions towards licensure of a certified public accountant. It is also consistent with previous precedence established by the Board in VW 2016-274.

Conclusion

Based upon the foregoing information, I respectfully request that the Board consider and grant a permanent variance from the requirements of Rule 61H1-27.001(5)(a), F.A.C. If the Board should have any questions or need any additional information in support of my petition, please let me know.

Sincerely,

  
Benjamin Kincaid, CFE, CFF, CVA.  
(850) 687-7400  
355 Lilly Bell Lane  
Freeport, FL 32439

Enclosures