

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
GARY GIBERSON**

VW 2019-092

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Gary Giberson, filed a petition for a permanent variance from **Rules 61H1-33.006(2)(a) and 61H1-31.006, Florida Administrative Code (F.A.C.)**, on May 2, 2019. The notice of the petition appeared in the Florida Administrative Register on May 13, 2019, in Volume 45 Number 93. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Florida Board of Accountancy ("Board") held on July 12, 2019, in Orlando, Florida. Petitioner was present at the proceeding and was not represented by counsel. The Board was represented by Rachele Munson, Assistant Attorney General. The Petition is incorporated by reference herein and attached to this notice.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. Petitioner's license reverted to a delinquent status on January 1, 2018, after payment of his renewal fee was returned to Petitioner by the Department of Business and Professional Regulation ("Department") due to Petitioner's error in license identification on the payment.
2. Petitioner states he paid the fee timely to maintain an uninterrupted active licensure status; however, his payment by check did not include the correct license number nor did the check include his name. The check identified a license number of AC 18429, and the Petitioner's license number is AC 18249.
3. Petitioner requests a refund of the \$250.00 reactivation fee and a waiver of the additional 40 CPE hours assessed due to the delinquency.
4. Petitioner, accordingly, requests a permanent variance of Rules 61H1-33.006(2)(a) and

61H1-31.006, F.A.C., to the extent necessary for the Board to find that he has met the requirements for renewal in this case.

GROUND FOR APPROVAL

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


5. Petitioner established that the purpose of the underlying statute, Section 473.305 and 473.313, F.S., would be met were he to be granted a variance from Rules 61H1-31.006 and 61H1-33.006(2)(a), F.A.C regarding licensure renewal and reactivation requirements.

6. Petitioner further established that the Board's application of 61H1-31.006 and 33.006(2)(a), F.A.C, to his circumstances would violate principles of fairness or impose a substantial hardship on him.

It is therefore **ORDERED** that the petition be **GRANTED**. The Board granted the variance finding that Petitioner acted in good faith.

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

DONE AND ORDERED this 8th day of August, 2019, by the Florida Board of Accountancy.



Roger Scarborough, Division Director
Florida Board of Accountancy ✓

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 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 **Gary Douglas Giberson**, 1040 SE 8th Street, Ocala, Florida 34471; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com this 15th day of August, 2019.

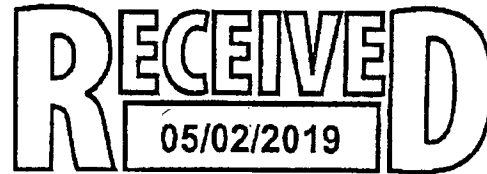


FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/2/2019
File #	

May 1, 2019

Petitioner Information:

Gary Douglas Giberson
1040 SE 8th St
Ocala, FL 34471
License Number: AC0018249



Applicable Portions of the Rule(s):

1. CPE hours required by Rule 61H1-33.006(2)a
2. Reactivation Fee Rule 61H1-31.006

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The citation to the statute the rule is implementing:

Section 120.542, Florida Statutes, and Rule 28-104.002

Type of Action Requested:

Petitioner in March 2019 paid \$350, \$100 for license renewal and \$250 Reactivation Fee.

Consider Petitioner timely filed, refund \$250 Reactivation Fee and not require additional 40 CPE hours.

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

Petitioner is a licensed certified public accountant whose license reverted to delinquent status on January 1, 2018, after the payment of the renewal fee for his CPA license was returned by the Florida Department of Business and Professional Regulation, in a letter dated November 21, 2017. Having acknowledged receiving the payment, they returned the check, stating, "our records indicate the transaction you are submitting funds for has already been paid."

Having done what was required to renew license, (1) completed 80 CPE hours by June 30, 2017 and (2) send in \$100. It certainly would not be fair to penalize my licensing for an administrative error by the Florida DBPR.

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

479.305 - Fee was not paid due to administrative error of DBPR. Check sent by Petitioner was returned. Petitioner initiated payment timely and correctly.

479.313 - Petitioner would not have been considered inactive had the payment been processed by DBPR.

Petitioner Statement:

Petitioner is requesting a waiver of the applicable rule(s).

Respectively Submitted,

Gary Douglas Giberson