

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
PHILLIP ULSCH**

**VW 2019-146**

**NOTICE OF INTENT TO GRANT PETITION**

Petitioner, Phillip Ulsch, filed a petition for a permanent variance from **Rule 61H1-33.006(2)(a), Florida Administrative Code (F.A.C.), and rules regarding the reactivation of his license (Rules 61H1-31.004 and 61H1-31.006, F.A.C.),** as corrected, on July 29, 2019. The notice of the petition appeared in the Florida Administrative Register on August 15, 2019, in Volume 45 Number 159. 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 October 18, 2019, in Daytona Beach, Florida. Due to a state of emergency declared by the executive branch resulting from inclement weather, previous proceedings were postponed, and the matter was continued until the date of this meeting. Petitioner was neither present nor represented by counsel at the proceeding. The Board was represented by Rachelle 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, 2019, due to non-payment of the renewal fee for his CPA license by December 31, 2018.
2. Petitioner states for the reasons referenced below, he overlooked the payment and renewal of his license by the December deadline and requests waiver of the delinquency fee:
  - Petitioner's son and daughter-in-law were killed in an automobile accident on September 18, 2018, leaving six grandchildren in need of care.
  - Three weeks after the family loss, his wife was rushed to the hospital and

remained in the intensive care unit for ten days and otherwise hospitalized for another seven days due to a life-threatening medical condition.

- Petitioner contracted a severe stomach virus during his visits to the hospital, resulting in weight loss of 13 pounds in six days.
- Petitioner was required to obtain legal counsel to assist with the probate of his son's estate, including guardianship and custody matters for the wrongful death action regarding his son and daughter-in-law's deaths.
- Petitioner was also involved in a five-month legal battle culminating with an appeal to the Department of Health and Human Services in Washington, D.C., regarding insurance coverage for his wife's hospitalization. Petitioner notes that the legal efforts were time consuming, expensive, and emotionally draining.

3. Petitioner, pursuant to the context of the petition, requests a variance on this occasion of Rules 61H1-33.006(2)(a), F.A.C., and fees regarding delinquency and reactivation, Rules 61H1-31.004 and 31.006, F.A.C., to the extent necessary for the Board to find that he has met the requirements for reactivation of his license. Petitioner's reference to Rule 61H1-31.002, F.A.C., regarding examination and re-examination fees, is acknowledged as a scrivener's error.

#### **GROUND FOR APPROVAL**

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

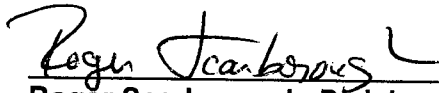
4. Petitioner established that the purpose of the underlying statute, Section 473.305 and 473.313, F.S., would be met were he to be granted a variance from Rules 61H1-31.004, 61H1-31.006, and 61H1-33.006(2)(a), F.A.C regarding the reactivation of his license.

5. Petitioner further established that the Board's application of 61H1-31.004, 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 18<sup>th</sup> day of November, 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 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 **Phillip Ulsch**, 8416 Ford Road, Bryceville, Florida 32009; 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](mailto:Rachelle.Munson@myfloridalegal.com); and Tiffany Allen at [Tiffany.Allen@myfloridalegal.com](mailto:Tiffany.Allen@myfloridalegal.com) this 22<sup>nd</sup> day of November, 2019.

Brandon M. Nichols

Jul. 29. 2019 2:08PM

**RECEIVED**  
07/29/2019

No. 38

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/29/2019
File #	

**PETITION FOR WAIVER OR VARIANCE OF BOARD OF ACCOUNTANCY RULE(S)**

**Petitioner Information:**

Phillip Michael Ulsch  
8416 Ford Road  
Bryceville, FL 32009  
Office: 904-743-6661  
Fax: 904-743-6669

**VW 2019-146**

**Attorney Information:**

I have not retained counsel in this matter, at this time.

**Applicable Portions of the Rule(s):**

This document serves as my request for a variance of rule 61H1-33.006(2) (a), Florida Administrative Code (F.A.C.) which states: 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:

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

**Statement of Relevant Facts:**

1. Petitioner is a licensed certified public accountant whose license reverted to delinquent status on January 1, 2019 after he failed to timely pay the renewal fee for his CPA license by December 31, 2018.
2. Petitioner's son and daughter-in-law were both killed in an auto accident on September 18<sup>th</sup>, 2018, leaving 6 grand boys. Three weeks later Petitioner's wife was rushed to the hospital with a life threatening medical condition and was admitted to ICU for 10 days and another 7 days in the hospital. In addition, Petitioner was required to retain counsel for probate of his son's estate, for guardianship and custody and for the wrongful death action involving the death of his son and daughter-in-law. These legal efforts have been very time consuming, expensive and emotionally draining. It was principally due to these issues that I overlooked the payment and renewal of my license in December 2018.

3. Petitioner contracted a severe stomach virus during visits to the hospital losing 13 pounds in 6 days.
4. Petitioner was denied insurance coverage on the substantial hospital cost which was overturned on appeal after 5 months of effort and a hearing with the Department of Health and Humans Services in Washington, D.C.
5. Rule 61H1-33.006(2)(a), FAC provides that an applicant for reactivation shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours.
6. Petitioner had completed the number of CPE hours required for his most recent biennium and seeks temporary variance from Rule 61H1-33.006(2)(a), FAC, to reactivate a delinquent license and from Rule 61H1-31.002, FAC for paying the delinquency fee.

Petitioner asserts that the petition for variance should be granted on the following grounds

1. Petitioner asserts 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.
2. Petitioner further asserts that the Board's application of Rule 61H1-33.006(2)(a), FAC, to his circumstances would violate principles of fairness and impose a substantial hardship on him given the ongoing custody and guardianship issues related to his grand boys.

Please submit this request to the Board in accordance with Section 120.542, Florida Statutes and Rule 28-104.002, Florida Administrative Code.

Sincerely,



Phillip M. Ulsch