

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
MICHAEL McELROY**

VW 2020-054

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Michael McElroy, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, April 21, 2020. The Notice of the petition appeared in the Florida Administrative Register on April 23, 2020, in Volume 46 Number 80. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Florida Board of Accountancy ("Board") on May 15, 2020, via teleconference and video conference. Petitioner was present and was not represented by counsel. 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 **Rule 61H1-28.0052(1)(b), F.A.C.**, provides in pertinent part:

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed.

- 2 Petitioner passed the FAR portion of the CPA examination on June 25, 2018, and credit for that portion of the examination expired on December 25, 2019. Petitioner passed the AUD portion of the examination on November 21, 2019, and credit for that portion of the examination will expire on May 21, 2021. Petitioner passed the REG portion of the examination on February 3, 2020, and credit for that portion of the examination will expire on August 3, 2021. Petitioner passed the BEC portion of the CPA examination on February 24, 2020, and credit for that portion of the examination will expire on August 24, 2021.

- 3 Petitioner stated he previously passed examination sections but lost credit for the

passage history due to Hurricane Irma complications, also noting that he ultimately passed all sections of the examination twice

4. In addition to receiving a promotion at work with increased work hours, Petitioner states he received information from the Board staff in December 2019 indicating he had 30 extra days to produce a passing score. He stated he relied on that information and passed two sections of the exam in February 2020.

5. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of one (1) month and nine (9) days for REG and two (2) months and eighteen (18) days for BEC beyond the eighteen months provided by the rule to pass all sections of the examination.

GROUND FOR APPROVAL

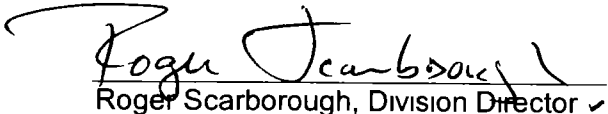
The Board determined the petition should be granted on the following grounds:

6. Petitioner established that the Board's strict application of Rule 61H1-28.0052(1)(b), F.A.C., to his circumstances regarding previous passage history during Hurricane conditions and subsequent reliance on Board staff information, would violate principles of fairness or would impose a substantial hardship on him.

7. Petitioner established that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, F.S.

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

DONE AND ORDERED this 9th day of JUNE, 2020, by the
Florida Board of Accountancy


Roger Scarborough, 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 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), 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 **Michael McElroy**, 11850 MLK Jr Street N , Apt 9101, St Petersburg, FL 33716, 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 15th day of June, 2020.

Brandon M. Nichols

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/21/2020
File #	

PETITION FOR WAIVER OR VARIANCE OF BOARD OF ACCOUNTANCY R

VW 2020-054

Petitioner Information:

Name Michael McElroy

Address 11850 MLK JR ST N APT 9101, St Petersburg, FL 33716

Email mmcelroy.la@mail.usf.edu

Telephone Number 727-424-1570

RECEIVED
APR 21 2020
DIVISION OF CERTIFIED
PUBLIC ACCOUNTING

Applicable Portion of The Rules:

The applicable portion of the rules for which permanent variance is being requested is rule 61H1-28 0052 (1) (b) . Florida Administrative Code, which states, "(1)) With respect to the CPA Examination (b) Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed In the event all four test sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken

The Citation to the statute the rule is implementing:

Statute 150 42: Variances and waivers

Type of Action Requested:

Petitioner requests the Board to grant a permanent variance from 61H1-28 0052(1)(b)

Specifics facts that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:

Petitioner passed the FAR portion of the CPA Examination on June 27, 2018 with a score of 79, and credit for that score expired December 25, 2019. Petitioner passed the AUD portion of the CPA Examination on November 22, 2019 with a score of 75 and credit for that score expires May 21, 2021 Petitioner passed the REG portion of the CPA Examination on February 02, 2020 with a score of 83 and credit for that score expires August 23, 2021 Petitioner passed the BEC portion of the CPA Examination with a score of 77 and credit for that score expires August 24, 2021. Petitioner experienced an increase in hours worked in September 2019 in regards to getting a promotion at work at Progressive Along with year end close petitioner did not have adequate time to study Petitioner contacted Florida Department of Business and Regulation in regards to increased work hours and how practitioner would not be able to study adequately until January The Department of Business and Regulation told practitioner that there is usually a 30 day "grace period" and that practitioner would not lose exam that expired if practitioner sat for exam within that period Practitioner expended funds and time and passed the REG examination and BEC examination within this period

If this petition were not granted, this would demonstrate a violation of principle of fairness, as the significantly increased workload during year-end close does not allow for adequate time to study for the CPA examination. Petitioner did not foresee the close of the year along with the promotion which brought on additional work to the petitioner

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

The permanent variance to rule 61H1-28 0052(1)(b) requested would serve the purpose of the statute 120 542 based on section two of this statute, which states, "For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." The literal application of rule 61H1-28.0052(1)(b) would significantly inhibit petitioner's ability to acquire his CPA license, as the increased workload was not foreseen by the petitioner. In addition, petitioner is continuing to take on new tasks and would not be able to adequately study for the CPA if this petition were not granted. Petitioner contacted the Department of Business and Regulation as recently as February 27, 2020 at approximately 2:32 PM and they assured petitioner that the FAR portion of the CPA Examination fell within the grace period.

Petitioner Statement:

I, Michael McElroy, am seeking permanent variance from rule 61H1-28 0052(1)(b) for the FAR section of the CPA examination, which had been expired for 30 days as of the day I sat for the final section of the CPA Examination and 60 days from the day that I passed the final section of the CPA Examination.