

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

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

VW 2020-129

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Michael Nielson, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on October 23, 2020. The Notice of the petition appeared in the Florida Administrative Register on November 3, 2020, in Volume 65 Number 125. 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 December 11, 2020, held via video and telephone 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 AUD portion of the CPA examination on September 10, 2018, and credit for that portion of the examination expired on March 10, 2020. Petitioner passed the REG portion of the examination on September 10, 2018, and credit for that portion of the examination expired on March 10, 2020. Petitioner passed the BEC portion of the examination on September 9, 2019, and credit for that portion of the examination will expire on March 9, 2021. Petitioner passed the FAR portion of the CPA examination on September 14, 2020 and credit for that portion of the examination will expire on March 14, 2022.

3. Petitioner attributes the technical computer difficulties he experienced when previously

taking the FAR section of the exam resulted in not initially passing that section. He further stated he was unaware of the requirement to report difficulties within five days for consideration and, accordingly, did not report the matter in a timely manner.

4. Petitioner acknowledged the country's subsequent lockdown due to COVID-19, resulting in test centers closing. Upon the reopening of exam centers, Petitioner was then able to re-take the section, at which time he passed.

5. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of six (6) months and four (4) days 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, 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 22 day of December, 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 Nielson**, 2829 Indian Creek Drive, Apt. #608, Miami Beach, FL 33140; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400; by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com and Cassandra Fullove, Paralegal, at Cassandra.Fullove@myfloridalegal.com this 8th day of January, 2020.

2021 

Brandon M. Nichols

PETITION FOR WAIVER OF BOARD OF ACCOUNTANCY RULE 61H1-28.0052(1)(b)

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/23/2020
File #	

Petitioner Information:

Michael Neilson
2829 Indian Creek Dr, Apt #608
Miami Beach, FL 33140

Attorney Information:

Not applicable

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RECEIVED

OCT 23 2020

Florida Division of
Certified Public Accounting

Applicable Portions of the Rule:

61H1-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

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:

Florida Statute 473.306 - Examinations

Type of Action Requested:

The petitioner kindly requests that the Board permanently waive the rolling eighteen-month requirement found in Rule 61H1-28.0052(1)(b) and reinstate credit for AUD and REG exams that expired on March 10, 2020, thus allowing the petitioner to immediately apply for licensure.

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

The principles of fairness were violated due to unforeseen personal matters caused by COVID-19 detailed in this petition.

My wife is an experienced registered nurse (RN) and had quit her full-time nursing position towards the end of 2019 to stay home with our infant son. As local hospitals began to ramp up staffing efforts as early as mid-to-late February to combat the possibility of COVID-19 outbreaks, my wife started looking into returning immediately to full-time work. Registered nurses adhere to the ANA Code of Ethics, which defines that caring for the patient is a nurse's primary commitment. Facing the possibility of my wife returning to help on her specialized unit, we found ourselves in an uncertain and stressful situation. One of the main issues we had to consider was how we would care for our infant son. We have no immediate or extended family in the state of Florida that could care for our child, which meant I would need to care for him at home while still working full-time.

During this time of uncertainty, I was scheduled to sit for my final exam, FAR, on February 28, 2020, and had credit for two of my exams, AUD and REG, set to expire on March 10, 2020. If I would have passed FAR on that date, then Rule 61H1-28.0052(1)(b) would have been fulfilled. In the week leading up to the scheduled February 28 test date, I believed that I needed

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additional time to study to ensure that I would be best prepared to take and pass the exam. I found several available testing dates between March 2-10; however, due to the possibility of my wife immediately returning to work and I potentially needing to work from home to care for our son, I decided to not push back my testing date. Consequently, I took the exam and received a score of 72.

If this uncertainty caused by COVID-19 did not exist, then I would have pushed back my exam a week. I believe that with that extra time to study, I would have improved my score by at least three points and passed the exam. In this scenario, my credits for all four exams would have satisfied the rolling eighteen-month requirement outlined in Rule 61H1-28.0052(1)(b). Florida Statute 120.542(1) details how "strict application of uniformly applicable rule requirements can lead to unreasonable, unfair and unintended results in particular instances." Taking into consideration the situation our family faced with COVID-19, the strict application of Rule 61H1-28.0052(1)(b) would be "unreasonable" and "unfair" as defined in Florida Statute 120.542(1).

After receiving my results, I wanted to re-take FAR again as soon as possible but our country went into lockdown and all testing centers closed. As testing centers began to reopen, I first scheduled to retake FAR at the beginning of July but ultimately pushed back the exam until August 31 as Florida COVID-19 cases surged the first week of July to over 10,000 new cases daily. I did not feel comfortable going to a public testing center with cases surging since I live in Miami, which was the national epicenter for new COVID-19 cases at the time. On August 31, I sat for FAR and received a passing score of 83, but my credits for AUD and REG had already expired.

Timeline of CPA results

Exam	Score	Exam Date	Expiration Date
AUD	86	7/9/2018	3/10/20
REG	85	8/23/2018	3/10/20
BEC	69	11/8/2018	-
BEC	77	8/22/2019	3/9/21
FAR	72	2/28/2020	-
FAR	83	8/31/2020	3/14/22

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

The permanent variance from Rule 61H1-28.0052(1)(b) would reinstate credits for AUD and REG that previously expired on March 10, 2020 and would allow the petitioner to immediately apply for licensure. The petitioner has already met the educational (150 credit hours) and work (one year) requirements to qualify for licensure.

Petitioner Statement:

My name is Michael Nellson and I seek a permanent waiver from Rule 61H1-28.0052(1)(b), and request the Board kindly consider restoring credit to my AUD and REG scores that expired on March 10, 2020.

I sat for AUD and REG right before I began full-time work at Ernst & Young LLP in September 2018 and my scores were 86 and 85, respectively. I believe these scores demonstrate a high

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level of competency on the topics covered in these exams. However, restudying and retaking AUD and REG now would require a substantial time commitment, which is difficult with my family growing and my firm requiring that I work a minimum 55 hours each week at least through the end of the calendar year (due to substantial project wins related to COVID-19). My credit for passing BEC also expires March 9, 2021, and with significant delays due to COVID-19, time spent filing this petition and a significant workload, it would be very difficult to pass AUD and REG again within a tight time frame.

While I petition that unforeseen COVID-19 consequences violated the principles of fairness and prevented me from fulfilling Rule 61H1-28.0052(1)(b), I also experienced difficulties at the testing center on February 28, 2020, when I sat for and failed FAR. I was unaware at the time that NASBA requires all difficulties be reported within five days of the exam date, and as such did not report these difficulties in a timely manner, but I would kindly ask that the Board take them into consideration. Shortly after the two-hour mark of my exam, the computer I was using shut down. The employees at the testing center were very kind and apologetic, and for ten minutes they tried to restart the computer to no avail. I was reassigned to a different computer and when my exam appeared, I noted that the timer did not stop while I experienced these technical difficulties, which resulted in me losing more than ten minutes. Losing this time gave me great anxiety since I already knew that I would likely need every minute to finish the exam. As I assumed, the exam took the full four hours, and I scored three points shy of a passing score. I believe that the anxiety and loss of time caused by the technical difficulties negatively impacted my performance on the second half of the exam.

I am very appreciative of the Board taking time to consider my petition. If there are any questions or concerns about the information I have provided, please contact me at michaelnelson24@gmail.com or (949)322-0583.