

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
NICHOLAS H. FULMER**

VW 2020-037

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Nicholas H Fulmer, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on March 25, 2020. The Notice of the petition appeared in the Florida Administrative Register March 30, 2020, in Volume 46 Number 62. 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, presented a witness, 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 REG portion of the CPA examination on May 23, 2016, and credit for that portion of the examination expired on November 23, 2017. Petitioner passed the BEC portion of the examination on September 18, 2017, and credit for that portion of the examination expired on March 18, 2019. Petitioner passed the AUD portion of the examination on March 7, 2018, and credit for that portion of the examination expired on September 7, 2019. Petitioner passed the FAR portion of the CPA examination on March 18, 2019, and credit for that portion of the examination will expire on September 18, 2020.

3 Petitioner attributes the following medical factors and considerations impacting his ability

in meeting the requirements of the applicable rule

- a Documented medical issues specific to Petitioner's health history directly related to taking the exam,
- b Supporting medical documentation from a physician,
- c. Specific combined medical diagnosis including
 - Attention-Deficit Hyperactivity Disorder (ADHD), Combined Type
 - Dysthymic Disorder (Persistent Depressive Disorder)
 - Generalized Anxiety Disorder
 - Phobic Anxiety Disorder

4 Petitioner states he took the exam on 19 occasions due to his specific medical issues referenced herein, passed all four sections, although not within the timeline

5 Petitioner seeks a permanent variance from Rule 61H1-28 0052(1)(b), FAC, to allow an extension of the rule requirement 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 unique circumstances and extreme medical issues specific to the Petitioner, 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 **Nicholas H. Fulmer**, 3904 Rutledge Place, Mobile, AL 36608, 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

Nicholas H. Fulmer, MAcc

3904 Rutledge Place • Mobile AL 36608
(850) 974-9988 • nfulmer@cricpa.com

FILED	
Department of Business and Professional Regulation AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	3/25/2020
File #	

**PETITION FOR WAIVER OF BOARD OF ACCOUNTANCY RULE 61H1-28.0052(1)(b)
OF THE FLORIDA ADMINISTRATIVE CODE**

DATE: March 5, 2020

PETITION RESPECTFULLY SUBMITTED TO:

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

RECEIVED
MAR 24 2020

**DIVISION OF CERTIFIED
PUBLIC ACCOUNTING**

VW 2020-037

PETITIONER INFORMATION:

Nicholas H. Fulmer, MAcc (National Candidate ID 64646814)
3904 Rutledge Place
Mobile AL 36608
(850) 974-9988
nfulmer@cricpa.com

ATTORNEY INFORMATION:

No attorney retained at this time

APPLICABLE PORTIONS OF THE RULE:

In accordance with RULE 28-104.002 of the Florida Administrative Code, I am submitting this formal petition for waiver of the eighteen-month requirement.

I am respectfully petitioning the Board to waive the rolling eighteen-month period requirement as specified in RULE 61H1-28.0052(1)(b) of the 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."

CITATION TO THE STATUTE THE RULE IS IMPLEMENTING:

The citation to the statute the rule I'm addressing is Florida Statute 120 542 (1) Strict application of the uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation

120 542 (2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. 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.

TYPE OF ACTION REQUESTED:

I am requesting that the Board kindly grant me a PERMANENT WAIVER of the eighteen-month requirement and grant my CPA license.

SPECIFIC FACTS THAT DEMONSTRATE A SUBSTANTIAL HARDSHIP OR VIOLATION OF THE PRINCIPLES OF FAIRNESS THAT WOULD JUSTIFY A WAIVER OR VARIANCE FOR THE PETITIONER:

The statutes above aspire to ensure principles of fairness for all licensing candidates while appreciating that certain hardships warrant exceptions for waiver. The hardship I face in endeavoring to pass all four exam sections in a rolling eighteen-month window is my mental health disability. Specifically, since childhood I've suffered from a trio of mental health challenges including ADHD, clinical depression, and anxiety including tremendous test-taking panic. Although I've been a solid and dedicated auditor for the past seven-and-a-half years, I am not a good test-taker as evidenced by my taking the exams nineteen times over the past five years. While I have passed all four sections of the CPA licensing exam which arguably should demonstrate my professional competence, this achievement for me required two-years and ten-months, which is slightly beyond the eighteen-month window. My clinical hardship is severe enough that my ability to pass all four exam sections in eighteen months seems impossible. While my test-taking journey has been rather long and eventful, I have demonstrated competency in all four exam sections and my skills as an auditor are strong. I am arguing that the hardship of my clinical disability violates the "principles of fairness" as the literal application of the eighteen-month rule affects persons with mental health disabilities like mine in a manner significantly different from the way it affects candidates without such a disability. I am asking the Board to deem that my professional competence has been demonstrated based on (1) my successfully passing all four exam sections, (2) my education, training, and experience including seven-and-a-half years of solid auditing performance, and (3) letters of endorsement from colleagues familiar with my work. I'm asking the Board to compassionately and reasonably waive the eighteen-month restriction due to my disability hardship and grant my CPA license.

REASONS WHY THE WAIVER OR VARIANCE REQUESTED WOULD SERVE THE PURPOSE OF THE UNDERLYING STATUTE:

In Statute 473, the legislature recognizes that "there is a public need for independent and objective public accountants and that it is necessary to regulate the practice of public accounting to assure the minimum competence of practitioners and the accuracy of audit statements upon which the public relies and to protect the public from dishonest practitioners and, therefore, deems it necessary in the interest of public welfare to regulate the practice of public accountancy in this state." Herein the legislature rightly asserts that there is a public need for qualified CPAs who will give the public confidence in their practice of public accounting 473.302(8).

Rule 61H1-28.0052(2) states that "a candidate shall be deemed to have passed the CPA Examination when the candidate has been granted credit for all sections of the CPA Examination. Upon certification of the examination scores by the Board to the Department that the applicant has met all licensure requirements as imposed by Chapters 455 and 473, F.A.S , and the rules promulgated pursuant thereto, the Department shall issue a license to practice public accounting to such individual. However, in no event shall an initial license be issued if the initial licensure fees and all required documents are not received within 36 months of the date of certification of examination scores by the Board."

Statute 120 542 acknowledges that the uniform application of rule requirements in certain cases leads to unreasonable, unfair, and unintended results and that it may be appropriate in such cases to provide relief from the literal rule. Moreover, the statute rightly condones that when a rule creates a "substantial hardship" that violates the "principles of fairness," relief in the form of a variance or waiver may be granted.

Fundamentally, the licensing process is designed to ensure that candidates demonstrate the minimum level of competence in their education, training, exam performance, and experience to safely serve the public. I am arguing that if the Board can reasonably waive the eighteen-month requirement due to my clinical disability hardship in the spirit of fairness, then I will have satisfied all requirements to be granted my CPA license. In my case, expanding the exam window to 34 months still protects the public because it takes into account my disability, and this would still fall within the 36-month period delineated in Rule 61H1-28.0052(2).

PETITIONER STATEMENT:

My name is Nic Fulmer and I am a candidate for CPA licensure in Florida. I hold a B.A. in Communications from Wake Forest University and an M.A. in Accounting from Florida State University. For the past seven years I've worked as an auditor for the accounting firm of Carr, Riggs, and Ingram servicing clients in government, for-profit, and non-profit businesses. For the past five-and-a-half years I've been undertaking the testing process to receive my CPA license in the state of Florida. Despite a hefty number of failed attempts (14), persistence has resulted in my passing all four sections on my 17th attempt. While ecstatic about proving my competence in all four sections, these passes did not occur within the stipulated 18-month window, so I remain unlicensed. And that is the reason for this petition.

I understand that our profession is governed by well-crafted statutes and rules that protect the principle of fairness, and in doing so also encourage exceptions to rules when reasonable hardships undermine that principle of fairness. With ample humility, I am asking the Board to grant me a compassionate waiver of the 18-month restriction and bestow my CPA license. I am a 33 year-old CPA candidate who works tirelessly to be the best auditor, husband, father, and Christian man I can be. I grew up the son of a talented CPA father, and I knew as a boy that I wanted to follow in his career footsteps. I also suffer from at times debilitating clinical depression, ADHD, and anxiety, including tremendous test-taking panic. This trio of mental health challenges has made my education from grade school through post-graduate studies especially difficult as repeated daily failures often bludgeoned my confidence, as it does for many with severe disabilities. With the support of loving parents, I endeavored to excel in both athletics and school despite my challenges and I am proud to say that I was a college athlete and earned both my bachelor and master's degrees.

I've learned two important life lessons on my journey. First, handicaps and hardships can reveal hidden strengths like determination and persistence, and for this I am forever grateful. Second, the amalgam of personal, family, and professional stresses on a decent man with mental health disabilities including test-taking panic can make passing a four-section exam in an 18-month window potentially unrealistic. I lament that I may never receive my CPA license not because I'm not a good and diligent auditor, but because I'm a poor test-taker.

Here is a snapshot of my testing journey on the Uniform CPA Exam

TEST #	SECTION	DATE	SCORE	RESULT
1	Audit & Attestation (AUD)	11.3.2014	74	Fail
2	Audit & Attestation (AUD)	1.3.2015	78	Pass
3	Regulation (REG)	5.28.2015	66	Fail
4	Regulation (REG)	11.28.2015	74	Fail
5	Regulation (REG)	5.11.2016	76	Pass
6	Financial Accounting & Reporting (FAR)	11.3.2016	66	Fail
7	Business Environments & Concepts (BEC)	11.30.2016	65	Fail
8	Financial Accounting & Reporting (FAR)	2.4.2017	62	Fail
9	Audit & Attestation (AUD)	4.29.2017	72	Fail
10	Financial Accounting & Reporting (FAR)	7.17.2017	63	Fail
11	Business Environments & Concepts (BEC)	9.6.2017	80	Pass
12	Financial Accounting & Reporting (FAR)	1.26.2018	66	Fail
13	Audit & Attestation (AUD)	2.10.2018	80	Pass
14	Financial Accounting & Reporting (FAR)	6.9.2018	72	Fail
15	Financial Accounting & Reporting (FAR)	8.13.2018	61	Fail
16	Financial Accounting & Reporting (FAR)	12.6.2018	66	Fail
17	Financial Accounting & Reporting (FAR)	3.8.2019	78	Pass
18	Regulation (REG)	6.5.2019	66	Fail
19	Regulation (REG)	8.29.2019	67	Fail

As this table reveals, I passed all four exam sections in a 2-year 10-month span (34 months), which is beyond the Board's 18-month window.

While I've embraced the blessings born from my clinical disability, I'm fearful that the best of my efforts today may never overcome the 18-month restriction. I'm now married and my wife and I both work full-time as we raise our two young twin children. Together we've weathered several hardships during my five-year testing journey including miscarriage, IVF, a difficult pregnancy requiring six months of bedrest, premature birth of our twins that required time in the NICU, and delivery complications that nearly took my wife's life. We nursed my wife back to full health, brought our children home and began the exhausting yet miraculous early years of family life, and I've continued my testing attempts to the best of my ability.

In the last year we've also been on the road meeting with doctors, teachers, and specialists, ultimately learning that our son is autistic. The taxing life of caring for a young family with a special-needs son and a daughter who also needs our attention appears to promise a nightmare end to the pursuit of my professional dream, all due to the stress-related test-taking fears growing more intense despite my best personal efforts even with professional help. Coping with life stresses requires diligence on my part, and fortunately I have benefitted most of my life from actively engaging professional help. Even now I am buoyed by a psychiatrist who optimizes my psychotropic medications and a psychologist who strengthens my coping tools and mindset. Despite all of my efforts, though, I fear that the 18-month window may be more than I can achieve while working full-time and fulfilling the demands of family life with a special needs son. This is particularly painful as I know that for the past seven-and-a-half years, my professional performance has demonstrated that I am a very good auditor and I feel more than ready to be an earnest and dedicated CPA. Although my bosses have consistently rated my job performance as very solid, the fact that I am missing promotions and pay increases because of my inability to receive my CPA license has inflicted additional distress, further exacerbating my already severe panic condition. Friends and family have asked whether there is science to validate that candidates who pass all four exam sections in 34 months are not as qualified as those who do the same in 18 months. I don't know the answer to that, but I trust that there is wisdom in the making of that rule. At least I hope so. I also trust that the Board may sometimes find stories like mine compelling, agree to a reasonable exception in the spirit of fairness and appreciation of my clinical disability hardship, and welcome a proven auditor into the CPA profession based on merit without calendar restrictions.

I was born to do accounting. I was also born with a clinical disability that makes passing four exam sections in 18 months seemingly impossible. While my test-taking journey has been rather long and eventful, I have demonstrated competency in all four exam sections and my skills as an auditor are strong. If you were to compassionately waive the 18-month requirement due to my mental health disability, my wife and I would be forever grateful and I would vow to represent the CPA profession in ways that make you all proud.

In summary, I am respectfully petitioning the Board to grant me a PERMANENT WAIVER of the eighteen-month requirement specified in RULE 61H1-28.0052(1)(b) of the Florida Administrative Code. Statute 473 rightly asserts that there is a public need for qualified CPAs who will give the public confidence in their practice of public accounting. The spirit of fairness shapes our licensing process and specifically recognizes that exceptions due to reasonable hardships may be made on a case by case basis. I am asking the Board to waive the eighteen-month requirement due to my clinical hardship and deem that my passing of all four sections of the CPA licensing exam, along with my cumulative education, training, and experience, satisfies the minimum requirements the state needs to confer my CPA license.

Thank you for sincerely considering this petition. If I am fortunate enough to receive your reasonable and compassionate waiver of the eighteen-month rule and grant my CPA license, I pledge that I will serve the profession in the very highest manner and will make you all proud

Respectfully,

A handwritten signature in black ink, appearing to read 'Nic Fulmer', with a stylized flourish at the end.

Nic Fulmer, MACC