

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
JAMES FENNELLY**

NOTICE OF INTENT TO GRANT PETITION **VW 2021-142**

Petitioner, James Fennelly, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on September 21, 2021. The Notice of the petition appeared in the Florida Administrative Register on October 6, 2021, in Volume 47 Number 194. 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 October 29, 2021, via telephone 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 REG portion of the CPA examination on November 4, 2019, and credit for that portion of the examination expired on June 30, 2021. Petitioner passed the FAR portion of the examination on August 6, 2020, and credit for that portion of the examination will expire on February 6, 2022. Petitioner passed the AUD portion of the examination on July 12, 2021, and credit for that portion of the examination will expire on January 12, 2023. Petitioner passed the BEC portion of the CPA examination on September 14, 2021, and credit for that portion of the examination will expire on March 14, 2023.

3. Petitioner, in relevant part, described the following as negative impacts regarding his

ability to prepare and timely pass all sections of the CPA examination: COVID-related health issues, additional family health issues, and personally providing palliative care to his mother who suffered from diminishing health.

4. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), F.A.C., to allow an extension of the eighteen-month rule requirement.

GROUND FOR APPROVAL

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

5. In light of his personal family hardships, Petitioner's two-month proximity for compliance with the eighteen-month requirement.

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 8 day of November, 2021, by the Florida Board of Accountancy.

FLORIDA BOARD OF ACCOUNTANCY



**Roger Scarborough, Division Director
Division of Certified Public Accounting**


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 **James Fennelly**, PO Box 4724, Boynton Beach, FL 33424; 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; and Cassandra Fullove at Cassandra.Fullove@myfloridalegal.com this 17th day of November, 2021.



STATE OF FLORIDA
BOARD OF ACCOUNTANCY

PETITION FOR VARAINCE FROM RULE 61H-128.0052 (1) (b)

18 Month Rule

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/21/2021
File #	

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SEP 21 2021

Florida Division of
Certified Public Accounting

Date: September 16, 2021

Petitioner Information:

James Fennelly
PO Box 4724
Boynton Beach, FL 33424
Mobile: (561).346.0695
Email: jamesjosephjunior@hotmail.com

VW 2021-142

Attorney Information:

Not Applicable

Applicable Portions of the Rules:

61H1 -28.0052(1)(b), Florida Administrative Code (F.A.C.) 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 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:

Statue 120.542: Section 473.306: Examination

Type of Action Requested:

The petitioner requests that the Board of Accountancy please waive Rule 61 H1 - 28.0052(1)(b), F.A.C. stated above due to the following circumstances.

Specific fact(s) that demonstrates a violation of the principles of fairness that would justify a variance for the petitioner:

Petitioner's mother long suffered from dementia and the petitioner had been his mothers the primary caregiver since 2015. Over the years the petitioner arranged his schedule to meet his academic and work demands while attending to the needs of his mother. The petitioner received his BBA In Accounting in December of 2016 and his Master of Taxation in May of 2019.

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

PETITION FOR VARAINCE FROM RULE 61H-128.0052 (1) (b)

18 Month Rule

Additionally, the petitioner passed the REG exam in the Fall of 2019 and had to reschedule his FAR exam due to the test center closures in the late spring of 2020. The adult day center that the petitioner's mother had attended closed due to COVID-19. After the center's closing, the petitioner's mother experienced a decline both physically and mentally eventually needing round the clock monitoring. Due to the deterioration of the petitioner's mother and uncertainty of COVID-19 exposure, the petitioner paused his testing after passing the FAR portion in July of 2020. Providing palliative care during the last few months of petitioner's mom's life was both physically and mentally exhausting on the petitioner. These factors impeded the petitioner's ability to prepare for remaining portions of the CPA exam.

Petitioner passed the REG examination on October 16, 2019. The credit expired on June 30 2021. The petitioner passed FAR on July 14, 2020, and the credit will expire on February 6,2022. The petitioner passed AUD on June 21, 2021 the credit will expire on January 12, 2023. The petitioner passed BEC on September 07, 2021 and the credit will expire on March 14, 2023.

Petitioner Statement:

I, James Fennelly, am seeking a permanent variance from Rule 61H1 -28.0052(1)(b) F.A.C., and request that the Board kindly grant me the restoration of my passing score for REG which expired on June 30^m,2021.

RECEIVED

SEP 21 2021

Florida Division of
Certified Public Accounting

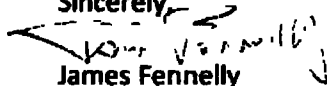
Roger Scarborough
Florida Division of Certified Public Accounting
Florida Department of Business & Professional Regulations
240 NW 76th Drive, Suite A
Gainesville, FL 32607

Mr. Scarborough,

Please find my petition request for a waiver of Rule 61H1 -28.0052(1)(b), Florida Administrative Code (F.A.C.). Let me know if I need to provide any additional information to aid in the Board's decision.

Your time and consideration are greatly appreciated.

Sincerely,



James Fennelly
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Boynton Beach, FL 33424
Mobile: (561).346.0695
Email: jamesjosephjunior@hotmail.com