

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
FRANK DIEGUEZ**

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**NOTICE OF INTENT TO GRANT PETITION      **VW 2022-011****

Petitioner, Frank Dieguez, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on January 21, 2022. The Notice of the petition appeared in the Florida Administrative Register on February 2, 2022, in Volume 48 Number 22. 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 March 18, 2022, in Orlando, Florida. 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 February 3, 2020, and credit for that portion of the examination expired on August 3, 2021. Petitioner passed the REG portion of the examination on July 8, 2020, and credit for that portion of the examination expired on January 8, 2022. Petitioner passed the BEC portion of the examination on May 10, 2021, and credit for that portion of the examination will expire on November 10, 2022. Petitioner passed the AUD portion of the CPA examination on January 10, 2022, and credit for that portion of the examination will expire on July 10, 2023.

3. Petitioner, in relevant part, described the following circumstances as negative conditions

impacting his ability to prepare and timely pass all sections of the CPA examination.

- Severe medical conditions exacerbated by stress and supported by a doctor's note.
- Two exam date cancellations due to the pandemic health emergency and a hurricane.
- Unprecedented working conditions caused by the pandemic.

4. Petitioner, at the time the petition was submitted, was approximately five (5) months and seven (7) days outside the 18-month window for passage of FAR pursuant to the rule requirement.

5. 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:

6. Petitioner's illness-related hardship was a key consideration in the Board's approval; however, the Petitioner's work demands were not a material consideration. Given the recognized hardship, the Board concluded that Petitioner's proximity for compliance with the eighteen-month rule requirement was noteworthy.

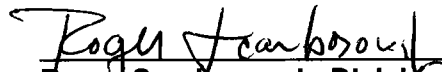
7. Petitioner established that the Board's strict application of Rule 61H1-28.0052(1)(b), F.A.C., to his circumstances, would violate principles of fairness or would impose a substantial hardship on him.

8. 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 15<sup>th</sup> day of April, 2022, by the  
Florida Board of Accountancy.

**FLORIDA BOARD OF ACCOUNTANCY**

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

**NOTICE OF RIGHT TO HEARING**

This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first (21<sup>st</sup>) day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Division Director of the Board at 240 Northwest 76<sup>th</sup> Drive, Suite A, Gainesville, FL 32607. The applicant or petitioner may petition for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57 (1), Florida Statutes, or for a hearing not involving disputed issues of material fact pursuant to Section 120.57 (2), Florida Statutes.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, **including a statement of all disputed issues of material fact**. The Board may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with the rule requirements. A petition for a proceeding not involving disputed issues of material fact must contain information required by Rule 28-106.301, Florida Administrative Code, including a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief.

In accordance with Section 120.573, Florida Statutes, mediation 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 **Frank Dieguez**, 11432 SW 41<sup>st</sup> Street, Miami, Florida 33165; 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: Rachele Munson, Assistant Attorney General, at [Rachele.Munson@myfloridalegal.com](mailto:Rachele.Munson@myfloridalegal.com); Cassandra Fullove at [Cassandra.Fullove@myfloridalegal.com](mailto:Cassandra.Fullove@myfloridalegal.com); and Tracy Smith at [Tracy.Smith@myfloridalegal.com](mailto:Tracy.Smith@myfloridalegal.com) this 12<sup>th</sup> day of April, 2022.



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|--|-----------------|
| <b>FILED</b>                                       |                 |
| Department of Business and Professional Regulation |                 |
| Senior Deputy Agency Clerk                         |                 |
| CLERK  | Brandon Nichols |
| Date   | 1/21/2022       |
| File #   |                 |

**PETITION FOR VARIANCE From Rule 61H1-28.0052(1)(b) 18 Month Rule**

**Petitioner Information:**

Name: Frank Dieguez  
Address: 11432 SW 41 ST, Miami, FL 33165  
Phone: 305-338-7765  
Email: Frankdieguez21@yahoo.com  
Exam Application ID: 322050

RECEIVED

JAN 21 2022

Florida Division of  
Certified Public Accounting

**Attorney Information:**

Not Applicable

**VW 2022-011**

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

**61H1-28.0052(1)(b): Number of Sitzings, 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 sections(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:**

Section 473.306 - Examinations

**Type of Action Requested:**

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

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

The petitioner has been working in public accounting at a certified public accounting firm for over 5 years, as of September 2016, while obtaining his Master's in Accounting with the ultimate goal of obtaining his CPA license.

The petitioner started taking his CPA exams in January 2020, right before the start of the Coronavirus pandemic ("COVID"). The petitioner has the following medical conditions, Type 1 Diabetes and Epilepsy, which made him more susceptible to serious complications from the Coronavirus disease. The fear and stress due to his medical conditions put the petitioner at a disadvantage compared to regular test takers. Further, the petitioner needed to continue working for the CPA firm, since he is unable to afford his required diabetic and convulsion medication without health insurance.

Due to unprecedented working conditions caused by the pandemic and an extended busy season, including nights and weekends, in which he was averaging 50-60 hour work weeks from February 2020 to October 2020, February 2021 to May 2021, and

August 2021 to October 2021, the additional stress and risk added to the cause of the petitioner not being able to complete the exams in the required window.

Additionally, during the petitioner's 18 month window he had two exam dates canceled. One exam was canceled because of COVID and rescheduled a month later. Another exam was canceled due to Hurricane Eta, in which the petitioner had to call Prometric corporate, since they failed to notify the petitioner of the canceled exam, causing weeks of delay in finding an open appointment to reschedule. These delays also cost additional paid time off from work that were required to be taken and were limited.

As support, the petitioner is also attaching a doctor's note from his Endocrinologist, which helps explain his medical condition and the abnormal stress he underwent during the COVID period.

Given the circumstances mentioned above, the petitioner is requesting this variance.

| Exam | Exam Date  | Score Date | Expiration Date | Score |
|------|------------|------------|-----------------|-------|
| FAR  | 01/06/2020 | 02/04/2020 | 08/03/2021      | 75    |
| REG  | 06/07/2020 | 07/09/2020 | 01/08/2022      | 82    |
| BEC  | 04/23/2021 | 05/11/2021 | 11/10/2022      | 77    |
| AUD  | 12/18/2021 | 01/11/2022 | 07/10/2023      | 79    |

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

The petitioner has successfully passed the uniform CPA examination, has met all education and work experience requirements, and is of good moral character.

**Petitioner Statement:**

The petitioner respectfully seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC and requests the 18-month window be extended.