

STATE OF FLORIDA  
BOARD OF ACCOUNTANCY

IN RE: PETITION FOR VARIANCE BY  
MATTHEW GAJOWIAK

VW 2022-020

**NOTICE OF INTENT TO GRANT PETITION**

Petitioner, Matthew Gajowiak, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on February 1, 2022. The Notice of the petition appeared in the Florida Administrative Register on March 2, 2022, in Volume 48 Number 42. 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 REG portion of the CPA examination on June 6, 2020, and credit for that portion of the examination expired on December 8, 2021. Petitioner passed the BEC portion of the examination on November 9, 2020, and credit for that portion of the examination will expire on May 9, 2022. Petitioner passed the AUD 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 FAR 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.

- Emergency surgery in November 2020 causing a major disruption in his exam preparation.
- Exposure to COVID-19 in January 2021 prior to the availability of a vaccine and an effort by him and his family members to avoid extended time in public spaces.
- An independent decision to wait for the availability of a vaccine in the height and unknowns of a pandemic before sitting for other sections of the exam.

4. Petitioner, at the time the petition was submitted, was approximately one (1) month and two (2) 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 and healthcare caution due to the pandemic were considerations in the Board's approval. Ultimately, the Board concluded that Petitioner's one-month 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 1<sup>st</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 **Matthew Gajowiak**, 1164 Orange Season Lane, Winter Garden, Florida 34787; 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.



<b>FILED</b>	
<small>Department of Business and Professional Regulation</small>	
<small>Senior Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	2/1/2022
File #	

**PETITION FOR WAIVER OR VARIANCE of BOARD OF ACCOUNTANCY RULE(S)**

**Petitioner Information:**

Matthew Gajowiak  
1164 Orange Season Lane  
Winter Garden, FL 34787  
Mattg115@yahoo.com

**RECEIVED**

FEB 01 2022

*Florida Division of  
Certified Public Accounting*

**Attorney Information:**

N/A

**VW 2022-020**

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

Rule 61H1-28.0052(1)(b), Florida Administrative Code; 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 120.542: Section 473.306 - Examinations

**Type of Action Requested:**

I, Matthew Gajowiak, request that the Board of Accountancy please waive rule 61H1-28.0052(1)(b), 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:**

Please refer to the following circumstances noted below, which demonstrate the petitioner's justification for a variance:

- My first scheduled exam was set for April 1<sup>st</sup>, 2020. Unfortunately, due to COVID-19, test centers were closed, and my exam was cancelled by Prometric due to closures.
- Test centers were closed for just over six weeks and once reopened, I scheduled an exam within the same month and passed on June 8<sup>th</sup>, 2020 (the 18-month clock begins).
- Over the next four months, I sat for four exams working toward my next passing score. In late October I passed my second exam with hope that I was at a steady pace to meet the eighteen-month criteria. Unfortunately, any sense of hope quickly dwindled due to following circumstances...
- On November 5<sup>th</sup>, 2020 I was diagnosed with appendicitis. The nature of the condition is critical and required emergency surgery. I spent three days in the hospital and the next several weeks in recovery (see doctors note attached). The recovery time for my appendectomy procedure was four weeks, causing a major disruption in exam

preparation. I fully recovered from surgery in early December 2020 and spent the next several weeks studying ultimately not sitting for another exam until January 9<sup>th</sup>.

- On January 19<sup>th</sup>, 2021 I was notified from Prometric of a possible COVID-19 exposure with an individual that was in the same test center as me (see email attached). This individual had tested positive for COVID-19 which prompted the notification. The vaccine had not yet been introduced to the public and the variant was dangerous. During this time, COVID-19 still had many uncertainties, and personal opinions on the topic for most altered daily. I knew that when taking an exam my exposure would be heightened due to the extended period in the same space with the same individuals. Also, during this time, I was working from home and household members and myself were trying to avoid extended times in public spaces. With the above taken into consideration, I made the decision to hold sitting to take another exam until vaccines were more widely available (approx. three months).
- In the Spring of 2021, I passed my third exam and began preparing for my final exam.
- On an attempt of taking my final exam (FAR), I scored a 72. I knew I was close and was hopeful to take it again within the next testing cycle so that I could maximize my opportunity to pass before my expiration date. Unfortunately, I did not receive my NTS before the testing window ended, missing a chance to take the exam.
- I took the exam within the last available cycle and scored a 73. I received the score of 73 on December 16<sup>th</sup>, 2021 and my REG exam expired December 8<sup>th</sup>, 2021.
- Remaining persistent, I sat again for my final exam in the very next testing window, only 15 days later, on December 31<sup>st</sup>, 2021. On January 11<sup>th</sup>, 2022 I received confirmation of a passing score for my final exam, this completing all four parts in just over an eighteen-month window.

The past year and a half have been unprecedented in many ways, both globally and personally. The circumstances summarized above were unanticipated and difficult to work through. Without the roadblocks presented, I firmly believe I would have successfully finished all four parts of the CPA exam within the eighteen-month period. With that in mind, I am kindly requesting that my extension be granted. Thank you for your consideration.

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

In the petitioner's opinion, if it weren't for the circumstances stated above, the petitioner would have met all CPA exam requirements, specifically, completing exams within the rolling eighteen-month window.

**Petitioner Statement:**

Petitioner is respectfully seeking a permanent variance from the Rule 61H1-28.0052(1)(b), F.A.C. to extend the rolling eighteen-month period and accept the four passing scores. Thank you for your consideration.