

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
RACHEL MOLINA MENEDEZ**

VW 2022-060

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Rachel Molina Menendez, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on June 9, 2022.

The Notice of the petition appeared in the Florida Administrative Register on June 17, 2022, in Volume 48 Number 118. 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 July 15, 2022, in Orlando, Florida. Petitioner was present and was represented by legal counsel. The Board was represented by Rachelle Munson, Senior 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 August 24, 2020, and credit for that portion of the examination expired on February 24, 2022. Petitioner passed the AUD portion of the examination on February 7, 2022, and credit for that portion of the examination will expire on August 7, 2023. Petitioner passed the REG portion of the examination on March 16, 2022, and credit for that portion of the examination will expire on September 16, 2022. Petitioner passed the BEC portion of the CPA examination on April 11, 2022, and credit for that portion of the examination will expire on October 11, 2023.

3. Petitioner, in relevant part, explained she suffered a pregnancy-related medical

emergency in January 2022 that negatively impacted her ability to timely pass BEC pursuant to rule requirements.

4. Petitioner, at the time the petition was submitted, is approximately thirty-seven (37) days outside the 18-month window for passage of BEC 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. Given the recognized hardship, the Board concluded that Petitioner's proximity for compliance with the eighteen-month rule requirement was noteworthy.

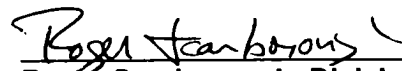
7. Petitioner established that the Board's strict application of Rule 61H1-28.0052(1)(b), F.A.C., to her circumstances, would violate principles of fairness or would impose a substantial hardship on her.

8. Petitioner established that, if she 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 25 day of July, 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 (21st) 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 76th 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.

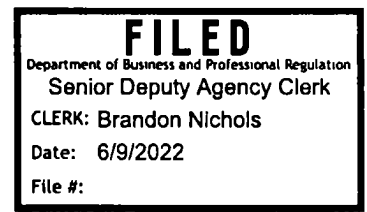
In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified mail to **Rachel Molina Menendez**, c/o Thomas Buchan, Esq., 2898-6 Mahan Drive, Tallahassee, Florida 32308 and at Tom@ish-pa.com; 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, Senior Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com; Cassandra Fullove at Cassandra.Fullove@myfloridalegal.com; and Tracy Smith at Tracy.Smith@myfloridalegal.com this

1st day of August, 2022.

Brandon M. Nichols



RECEIVED

JUN 09 2022

Florida Division of
Certified Public Accounting

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

Petitioner Information:

Rachel Molina Menendez
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Miami, Florida 33184
(305) 965-5216
rachelmolinam@gmail.com
National Candidate ID No. 939803
Jurisdiction ID No. 01671072

VW 2022-060

Attorney Information:

Thomas Buchan, Esq.
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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:

Section 473.306, Florida Statutes.

Type of Action Requested:

Petitioner hereby respectfully requests the Board of Accountancy permanently waive Rule 61H1-28.0052(1)(b), Florida Administrative Code.

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

Principles of fairness would be violated were a variance not granted to Petitioner. Petitioner took and passed her exams as follows:

FAR – Date examination taken and passed: 8/3/2020
Date score was received: 8/25/2020
Date credit expired: 2/24/2022
AUD – Date examination taken and passed: 1/10/2022

REG – Date examination taken and passed: 2/23/2022
BEC – Date examination taken and passed: 3/31/2022
Exhibit A, Score Notices.

After taking the first exam, FAR, Petitioner pursued and obtained her Masters' degree, which she completed on an expedited program in August 2021. At that time, she prepared to focus her time to complete her remaining CPA exams. While Petitioner was on track to timely complete all exams, she had emergency surgery on January 21, 2022. Due to a ruptured ectopic pregnancy, she had an excision of the left fallopian tube. Despite this traumatic event, she still was able to successfully pass her two remaining exams shortly thereafter on February 23 and March 31, 2022. This unexpected medical emergency caused the delay which resulted in her passing the BEC exam 37 days past her 18-month deadline.

Strict adherence to 18-month period set out in Rule 61H1-28.0052(1)(b), Florida Administrative Code, would unduly burden Petitioner and not treat her fairly, especially in consideration of prior Board decisions. The Board has granted petitions for the following extended periods thus far in 2022:

- Petition VW 2022-015, File No. 2022-03028: 4 months and 20 days.
- Petition VW 2022-011, File No. 2022-03026: 5 months and 7 days.
- Petition VW 2022-004, File No. 2022-03029: 5 months and 16 days.
- Petition VW 2021-171, File No. 2022-01265: 2 months.

Similar to Petitioner, all of the above granted petitions involved health issues of the petitioner or their immediate family. As Petitioner suffered an unexpected serious surgery and would be requesting the shortest extension of petitions approved thus far, to deny Petitioner would unfairly prejudice her.

The delay in Petitioner's career advancement caused by denying this Petition would cause an undue burden on her and further hinder her opportunities for career advancement and providing for her and her family. Petitioner respectfully requests her Petition be granted.

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

Petitioner successfully completed all exams within 37 days after the expiration of her 18-month period to do so. The extended time Petitioner took to complete the exams is immaterial and not an accurate reflection on the competency of Petitioner. Petitioner has all the requisite knowledge required of her profession, is of utmost moral character, and is prepared to become a valuable member of her field. Granting this extension would not violate the underlying purpose of Section 473.306, Florida Statutes.

Petitioner Statement:

Petitioner respectfully requests a permanent variance from Rule 61H1-28.0052(1)(b), Florida Administrative Code.