

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE OR WAIVER BY
MILDRED BOYER**

VW 2023-016

NOTICE OF INTENT TO DENY PETITION

Petitioner, Mildred Boyer, filed a petition for a permanent variance from the requirements of **Rules 61H1-31.004, 61H1-31.006, and 61H1-33.006, Florida Administrative Code (F.A.C.)** on February 6, 2023. The notice of the petition appeared in the Florida Administrative Register on February 21, 2023, in Volume 49 Number 35. No comments by interested persons were received. The petition (Exhibit A) was heard at a duly-noticed public meeting of the Board of Accountancy on March 30, 2023, in Orlando, Florida. Petitioner was neither present nor represented by counsel for the proceeding. The Board was represented by Rachelle Munson, Senior Assistant Attorney General. The petition is attached hereto and incorporated by reference.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. Rule 61H1-31.004, F.A.C., provides:

A delinquent status licensee shall pay a delinquency fee of \$25.00 when licensee applies for active or inactive status.

Rule 61H1-31.006, F.A.C., provides:

The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of Rule 61H1-33.006, F.A.C., shall be required for reactivation.

Rule 61H1-33.006, F.A.C., in relevant part, provides:

- (1) Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the

Department, the CPA Change of Status Form (DBPR CPA 7)...

- (2) However, if a licensee completed, reported, and provided proof of CPE completion in the DBPR On-line Services Portal pursuant to Rule 61H1-33.003, F.A.C., but their license is delinquent on January 1 for failure to report compliance with continuing professional education requirements and pay renewal fees by the preceding December 31st, a licensee may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed and by paying the renewal and reactivation fees required by Rules 61H1-31.003, 61H1-31.004 and 61H1-31.006, F.A.C., by March 15 of the same year of the delinquency
- (3) For a licensee to reactivate a delinquent license after March 15 of the same year of the delinquency or to reactivate an inactive license at any time, their application shall include proof of CPE completion of the required number of continuing professional education hours as follows:

Accounting/Auditing – At least 30 hours

Ethics – At least 8 hours of Florida Board-approved ethics

Behavioral – No more than 30 hours

Total Hours – 120 hours.

2. On January 4, 2022, Petitioner's license reverted to a delinquent status.
3. On December 23, 2022, Petitioner submitted the \$380.00 renewal fee.
4. On January 12, 2023, Petitioner submitted the \$105.00 renewal fee
5. Petitioner requests an "emergency reactivation" to continue work with the IRS regarding processing tax returns and related forms which do not specify a necessity for the CPA designation but are described as "easy to process" as a CPA.
6. Petition further states that Petitioner holds a Florida insurance license, and the CPA designation, although not needed, "adds prestige and credibility."
7. Petition states Petitioner does not practice accounting and auditing; however, noting the respect associated with the CPA designation, she would like to "continue with this respect."
8. Petition attributes health reasons and a communication error as the reason for the delinquency.
9. In an addendum comment, Petitioner acknowledges receiving an email to renew on September 29, 2021, to which she did not timely respond.

10. Petition states the "additional time" from her contact with the Board in December 2022 and the filing of the petition created a hardship for her.

11. A licensee has an affirmative duty to comply with licensure renewal requirements.

12. Petitioner seeks a permanent one-time waiver of the requirements of Rules 61H1-31.004, 31.006, and 33.006, F.A.C., to the extent necessary for the Board to allow reactivation without the requisite penalty and a refund of fees.

GROUND FOR DENIAL

The Board determined that, based on the requirements of Rules 61H1-31.004, 31.006, and 33.006(1), (2), F.A.C., the petition should be denied on the following grounds:

13. Petitioner failed to establish that the purpose of the underlying statute, Sections 473.305 and 473.313, F.S., would be met were she to be granted a variance from Rules 61H1-31.004, 31.006, and 33.006, F.A.C.

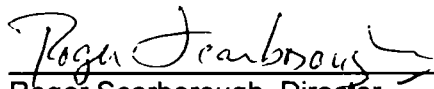
14. Petitioner further failed to establish that the Board's application of Rules 61H1-31.004, 31.006, 33.006, F.A.C., given the basis for her delinquency, would violate principles of fairness and impose a substantial hardship on her.

It is therefore **ORDERED** that the petition be **DENIED**.

This Notice shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 17 day of Apr. 1, 2023, by the
Florida Board of Accountancy.

FLORIDA BOARD OF ACCOUNTANCY



Roger Scarborough, Director
Division of Certified Public Accounting
for William Blend, Chair

NOTICE OF RIGHT TO HEARING

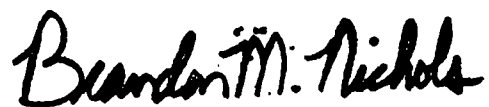
This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first (21st) day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Division Director of the Board at 240 Northwest 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.

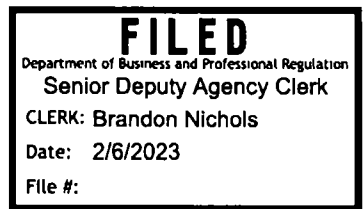
A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of all disputed issues of material fact.*** The Board may refer a petition to the Division of Administrative Hearings for assignment 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 **Mildred Boyer**, 11420 NW 23rd Street, Pembroke Pines, FL 33026; 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; Tracy Smith, Paralegal, at Tracy.Smith@myfloridalegal.com; and Cassandra Fullove, Paralegal, at Cassandra.Fullove@myfloridalegal.com this 21st day of April, 2023.





PETITION FOR WAIVER OR VARIANCE OF BOARD OF ACCOUNTING RULES

RECEIVED

FEB 06 2023

Florida Division of
Certified Public Accounting

Petitioner Information

Mildred Kurland Boyer
11420 NW 23 St.
Pembroke Pines, Florida 33026

VW 2023-016

Applicable Portion of Rules

Rule 61H1-31.004, F.A.C.- A delinquent status licensee shall pay a delinquency fee of \$25.00 when the licensee applies for active or inactive status.

Rule 61H1-31.006, F.A.C.- The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of rule 61H1-33.006, F.A.C., shall be required for reactivation.

Rule 61H1-33.006(1)(2), F.A.C.-Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the Department Form DBPR CPA 7 - CPA Change of Status Application. However, if a license is delinquent on January 1 for failure to comply with Rule 61H1-33.003, F.A.C., through failure to report compliance with continuing professional education requirements by the immediately prior December 31st, a Florida certified public accountant may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed, paying the fees required by Rules 61H1-31.003, 31.004 and 31.006, F.A.C., by March 15 of the same year of the delinquency.

(1) Each such application shall demonstrate successful completion of the required number of continuing professional education hours as follows. Accounting and Auditing-30, Ethics 8 hours, Behavioral not more than 30 and Total hours-120

Citation to the Statute- Section 120.542 -120.(2) Variances and waivers.-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 Actions

1. Reactivate my license.
2. Waive additional CPA requirements or as a minimum waive the additional hours of Accounting and Auditing. As a practical matter, I have completed over 140 hours prior to December 31, 2022 and completed additional CPE in 2023 and will complete another 28 by April 30, 2023. See attached updated spreadsheet. I believe I also took additional hours in 2020, but cannot find the records at this time. I do not provide any accounting and auditing service services. The cost of taking CPE hours is now very expensive. Now, I can only work part-time and would rather devote my time to those courses which will assist my clients.
3. Although, I did send in the required extra fees, the board could refund these fees. But for now, I only want to reactivate my license so this request is optional

Specific Facts that Demonstrate that a violation of the principles of fairness would justify waiver or variance.

First read the attached correspondence along with attachments. Note the correction in my second email.

Addendum: Today, I found the renewal for 2021 and wanted to recheck the status for 2022. I did find that I had applied for renewal on September 2, 2021 and apparently thought that the renewal was processed. **Until today**, I never saw the application notice that wanted additional information relating to a change of status. I do not know why the Board requested the CA-7, since there was no status change. Then on September 29, 2021, I received an email to renew. Upon reviewing the email, today, I noted that email did not mention a request for the CA-7. For some reason, I did not check the emails on September 29, probably because I was seeking medical help from my fall and traveling back from North Carolina to Florida. The doctor in North Carolina suspected I might have an Apical Pneumothorax (a condition possibly leading to lung collapse) and she urged me to go home as soon as possible and follow up with my own doctor. Actually, I did see my primary care doctor on September 29 and on September 30, I did get more X-Rays. Upon eventually receiving the results, my doctor informed me that I did not seriously injure myself. However, when I received the Board email to renew, I was preoccupied with my health situation. Now, I can only surmise that I did not review my emails during that time frame. Certainly, I would have followed up under normal circumstances.

I did not receive an email notice in 2022, probably due to my inactive status, but upon learning of my status quickly sent emails to the DBPR and renewed prior to December 31, 2022 along with the fees.

Emergency Reactivation

As noted, I never intentionally or willfully violated the Board of Accountancy Rules and in fact for over 45 years have always complied, either via my employers or individually. Please grant an emergency reactivation for the following reasons:

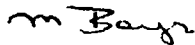
1. I am currently handling several IRS matters (going on three years) and will need updated Form 2848, Power of Attorney (POA) forms. As a CPA, the forms are easy to process. Dealing with the IRS is extremely difficult and I not want to complicate matters.
2. Many of my clients are US citizens living in Canada, who file both Canadian and US Tax returns. Canada Revenue requires an official transcript indicating payment of US taxes. As a CPA with a POA, I can easily access the transcript online. Otherwise, I have to go through a more complicated process.
3. The IRS has granted an extension to verify my CPA status for purposes of getting a PTIN. But the extension will soon expire.
4. I need the PTIN to file tax returns and want to get it activated prior to the tax season. I can wait until the end of February, but will need to process some returns after that date.
5. I also have a Florida insurance license and am a CFP®. While, I do not need to be a CPA to sell insurance or practice as a CFP®, being a CPA adds prestige and credibility to these practices. Business was slow during Covid but I would like to activate this part of my business in 2023.
6. I sent in the information to the Board on December 23 and did not receive the request for the petition until yesterday. Waiting an additional time creates a hardship for me.

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

Due to health reasons and a communication error, I did not renew the license. However, I have always complied with the CPA board requirements and have always practiced in an ethical, diligent, consciences and competent manner. I do not practice accounting and auditing, but do provide tax services to the public and tax research for other accountants and lawyers. During the past 50 years, I was an IRS Agent and tax manager for some of the largest Florida CPA firms. For the last 20 years, I have been self-employed. I have considerably reduced my tax preparation business and hope to completely eliminate it in the next few years, but I do want to continue tax research, IRS consulting and financial planning. While I am past the retirement age, working part time, sometimes only a few hours per day or a few days per week provides me with a purposeful life. Working remotely during Covid was a life saver for me. Given my experience, I provide a valuable service to the public and other practitioners. The public respects a CPA and I would like to continue with this respect.

In conclusion, I am seeking a waiver from the rules or variance, whichever applies. Essentially, I want to reactive my CPA license.

Mildred K. Boyer



Date: February 2, 2023