

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
MEDICAL PHYSICISTS

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Angel Sanders  
DATE 11-2-11

IN RE: PETITION FOR VARIANCE OR WAIVER OF RULE  
Chulhaeng Huh, Ph.D.

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**ORDER GRANTING EMERGENCY PETITION FOR VARIANCE OF RULE**

THIS MATTER came before the Department of Health (Department), area of Medical Physicists, pursuant to section 120.542, Florida Statutes, for consideration of the attached Emergency Petition for Variance or Waiver of Florida Administrative Code Rule 64B23-7.003(1). The request was filed on October 31, 2011, and will publish in the Florida Administrative Weekly on November 10, 2011.

Having reviewed this matter, the Department makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Petitioner has been working as a therapeutical medical physicist-in-training since he received his physicist-in-training license in 2003. Petitioner received notice of the termination of his license on November 13, 2011, at which time he will have held the license for eight years. According to rule 64B23-7.003(1), F.A.C., a physicist-in-training may renew the license every year, for a period not to exceed eight years.

2. Petitioner requested an emergency variance or waiver from the rule because, if the Department does not grant it, Petitioner will no longer hold a license after November 13, 2011. Petitioner may not work without a license.

3. Petitioner has made steady progress towards qualifying for a full license as a medical physicist, having completed Parts I and II of the board certification examination as well as four out of five segments in Part III of the examination. It is not uncommon for a medical physicist-in-training to take a significant amount of time, including the full eight years provided for by rule, to complete the qualification and examination process.

4. Petitioner is requesting a temporary variance from or waiver of the rule until June 30, 2012, by which date he expects to complete the requirements to qualify for full licensure.

### **CONCLUSIONS OF LAW**

5. The Department has jurisdiction to determine whether Petitioner meets the criteria for the issuance of a temporary emergency variance from or waiver of the rule.

6. Petitioner's situation constitutes an emergency. The Department considered that Petitioner will lose his license and ability to work effective November 13, 2011, unless the Petition is granted.

7. Variance means a decision by an agency to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule. Waiver means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.

8. A variance or waiver of the rule is granted when Petitioner demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness.

9. The purpose of the underlying statute is to protect the public health and safety from the harmful effects of excessive and unnecessary radiation by ensuring that the practice of

medical physics is entrusted only to licensed persons. Persons licensed as physicists-in-training must be qualified to practice medical physics under direct supervision, and should be making progress towards full licensure.

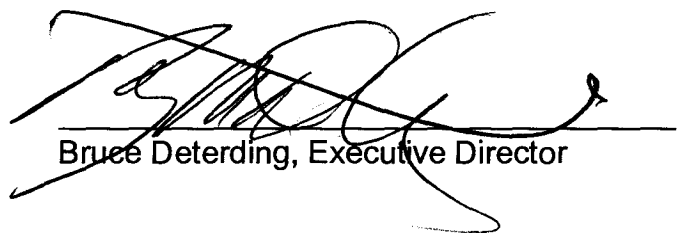
10. Petitioner meets the purpose of the underlying statute because it appears that he is practicing with skill and safety, under appropriate supervision, and making steady progress towards full licensure.

11. The hardship on Petitioner from the strict application of the rule would be his certain loss of employment because Petitioner would be ineligible to practice medical physics in Florida. Without employment, Petitioner also might not be able to complete the oral examination, the last part of the process required for full licensure.

WHEREFORE,

Petitioner's request for the emergency, temporary variance from or waiver of rule 64B23-7.003(1), F.A.C., is GRANTED. If otherwise eligible for renewal, Petitioner may renew his physicist-in-training license and it shall remain renewed through June 30, 2012.

DONE AND ORDERED this 2<sup>nd</sup> day of November, 2011.



Bruce Deterding, Executive Director

**NOTICE OF RIGHT TO HEARING**

This Order constitutes final agency action if no request for hearing is received by the Department on or before the 21<sup>st</sup> day after publication of the notice of disposition of the Petition in the Florida Administrative Weekly. A party whose substantial interests are affected by this decision may request a hearing by filing an appropriate petition with the Agency Clerk

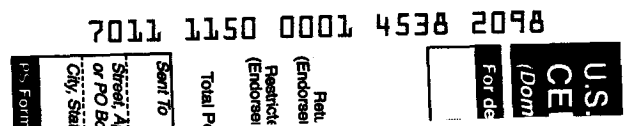
4052 Bald Cypress Way, Bin # A02, Tallahassee, Florida 32399-1703. A substantially affected party who disputes any material fact supporting the determination may request a hearing before an Administrative Law Judge pursuant to section 120.57(1), Florida Statutes, provided that the petition contains the information required by Rule 28-106.201, Florida Administrative Code, including a statement of the material facts that are in dispute. If no material facts are disputed, the party may request a hearing under section 120.57(2), Florida Statutes, provided that the petition contains the information required by Rule 28-106.301, Florida Administrative Code. 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 order has been provided by Certified Mail to Chulhaeng, Huh, Ph.D., 10110 Whisper Point Dr., Tampa, Florida 33647, and by electronic mail to Donna Erlich, Assistant General Counsel, Department of Health, Tallahassee, Florida 32399, this 2 day of November, 2011.



**Deputy Agency Clerk**



Chulhaeng Huh  
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October 28, 2011

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK **Angel Sanders**  
DATE **OCT 31 2011**

Advisory Council of Medical Physicists  
4052 Bald Cypress Way, Bin #C07  
Tallahassee, FL 32399-3257

**Caption: Petition for Emergency Variance from or Waiver of Florida Administrative Code 64B23-7.003(1), for Medical Physics in Training License, MPT39 – Temporary Extension through June 30, 2012.**

Dear Mr. Bruce Deterding,

Recently I received the notice of termination of my Medical Physics in Training License, MPT 39, pursuant to Florida Administrative Code 64B23-7.003(1), "A physicist-in-training may renew his or her certificate every year, for a period not to exceed eight years." I have been working as a therapeutical medical physicist with MPT 39 license in Florida since the license issued in 2003.

This petition is to request that you and advisory council grant a temporary extension of the effective date of my license (MPT 39) from the current date of November 13, 2011 to the new date of June 30, 2012 for the following reasons:

- 1) I have been diligently working full time in the field of Medical Physics, receiving training and gaining clinical experience while actively pursuing my board certification with the American Board of Radiology (ABR). I have progressed successfully through parts I & II and through four out of five segments of the last part, that being the oral exam dubbed Part III. Having received this conditional pass of the orals, I only have to finish this one final sub-segment of Part III to become fully board certified in Therapeutic Medical Physics. This will qualify me to become licensed in the state of Florida as a Therapeutic Medical Physicist instead of a Physicist in Training. An extension through June 30, 2012 of my current license should suffice to allow me to complete this last portion of the board examination process.
- 2) Losing my Physicist in Training license at this point in time would present an extreme hardship for me because I would no longer be employable in my current job. My employer would be forced to lay me off because I would be ineligible to practice medical physics in the state of Florida without my current license. My current employer is committed to continue my employment pending an extension of my license expiration date and my continued pursuit of my board certification with the ABR.

This request must be addressed on an emergency basis because I did not realize this was my last year of eligibility as a trainee physicist. Had I realized this I would have applied for a variance or waiver more than 90 days in advance of the expiration date of my license.

I am very hopeful of successfully completing my board certification process before June 30, 2012 and thus becoming eligible for my medical physics license in the state of Florida. I wish to continue practicing in Florida for many years in the future, but I need a favorable decision on the part of this council in order to do so.

I look forward your positive (and timely) consideration. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chulhaeng Huh', written over a horizontal line.

Chulhaeng Huh, Ph.D