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**DEPARTMENT OF HEALTH
BOARD OF OPTOMETRY**

NOVEMBER 14, 2014

**EMBASSY SUITES ORLANDO/LAKE BUENA VISTA SOUTH
4955 KYNGS HEATH ROAD
KISSIMMEE, FLORIDA**

**Reported By:
Diana C. Garcia, Court Reporter
Notary Public - State of Florida**

1 **BOARD MEMBERS:**

2 TIMOTHY UNDERHILL, O.D., CHAIRMAN
3 STUART KAPLAN, O.D., VICE-CHAIRMAN
4 TAMARA MAULE, O.D.
5 CHRISTOPHER KING, O.D., F.A.A.O.
6 TERRANCE NABERHAUS, O.D.
7 ROD PRESNELL, R.PH.
8 ROSA MCNAUGHTON, J.D., M.S. (NOT PRESENT)

9 **ALSO PRESENT:**

10 ADRIENNE RODGERS, EXECUTIVE DIRECTOR
11 LAWRENCE HARRIS, ESQUIRE, ASSISTANT ATTORNEY GENERAL
12 DIANE GUILLEMETTE, ESQUIRE, ASSISTANT ATTORNEY GENERAL
13 ELANA JONES, ASSISTANT GENERAL COUNSEL
14 EDITH ROGERS, REGULATORY SPECIALIST II
15 DIANA C. GARCIA, COURT REPORTER
16 AUDIO SPECIALIST

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P R O C E E D I N G S

November 14, 2014

9:05 a.m.

(The November 2014 Board of Optometry meeting was called to order, after which the following took place:)

CHAIRMAN UNDERHILL: I call the meeting to order. And we should have roll call.

MS. RODGERS: Dr. Underhill?

CHAIRMAN UNDERHILL: Here.

MS. RODGERS: Dr. Kaplan?

DR. KAPLAN: Here.

MS. RODGERS: Dr. King?

DR. KING: Here.

MS. RODGERS: Dr. Naberhaus?

DR. NABERHAUS: Here.

MS. RODGERS: Mr. Presnell?

MR. PRESNELL: Here.

MS. RODGERS: Dr. Maule?

DR. MAULE: Here.

MS. RODGERS: Board Counsel, Lawrence Harris?

MR. HARRIS: I'm here, thank you.

MS. RODGERS: Board Counsel, Diane Guillemette?

1 MS. GUILLEMETTE: Present.

2 MS. RODGERS: Prosecution Counsel, Elana
3 Jones?

4 MS. JONES: Present.

5 MS. RODGERS: I'm Adrienne Rodgers, the
6 Executive Director; and I also have Board Staff,
7 Edith Rogers.

8 And, Dr. Underhill, we have one request for
9 excused absence; that's Ms. McNaughton.

10 CHAIRMAN UNDERHILL: Correct.

11 MS. RODGERS: We need a motion to have her
12 --

13 CHAIRMAN UNDERHILL: We need a motion to
14 approve her absence?

15 MS. RODGERS: Yes.

16 DR. KAPLAN: Motion to approve her absence.

17 CHAIRMAN UNDERHILL: Dr. Kaplan moves.

18 DR. KING: (Raised hand.)

19 CHAIRMAN UNDERHILL: Dr. King seconds.

20 Thank you.

21 Discussion? (No response.)

22 All in favor say aye. (Board members
23 responded.)

24 MS. RODGERS: Thank you.

25 CHAIRMAN UNDERHILL: Thank you.

1 And let's do introductions from the
2 audience, so if we could start it in the back.

3 DR. BURNS-LEGROS: Denise Burns-LeGros,
4 (unintelligible).

5 MR. GRIFFIN: John Griffin,
6 (unintelligible).

7 (Audience members introduced themselves;
8 not using microphones and unable to be heard by
9 the court reporter.)

10 CHAIRMAN UNDERHILL: Thank you very much
11 for coming. Y'all will have to excuse my voice.
12 I'm a little bit raspy from moving an office and
13 sucking in tons of dust. So I have a little bit
14 of upper respiratory distress from an allergy
15 situation.

16 So let's turn our attention to the approval
17 of the minutes that's in your agenda packets.
18 Are there any additions, deletions, corrections
19 for the minutes?

20 Dr. King?

21 DR. KING: Mr. Chairman, I don't know if
22 this is relative or not, but it does say the
23 July -- on our agenda, it says the July 23rd
24 meeting was a teleconference call; that was the
25 meeting in Boca Raton.

1 And there was one change I'd like to make
2 on page 8 of the minutes under Reports,
3 Committee Reports, Examination. That was my
4 committee and there's blank; there's nothing
5 under that. And I do believe I made the comment
6 that simply the inaugural process of our
7 examination using the National Board of
8 Examiners in Optometry seemed to go well.

9 CHAIRMAN UNDERHILL: Thank you. Any other
10 corrections?

11 DR. NABERHAUS: Yeah. Dr. Underhill, on
12 the minutes for July 23rd, 2014, page 3, top
13 paragraph, last sentence where it says, "The
14 petition was crafted such that it could apply to
15 all ophthalmologists in the state of Florida."

16 I think that's a scrivener's error; I think
17 it should say optometrist.

18 MS. RODGERS: I didn't hear the last one.

19 DR. NABERHAUS: I think -- It said it
20 should apply to all ophthalmologists. I think
21 it's a scrivener's error; I think it should be
22 optometrist.

23 Did I read that correctly? (Reviewing.)

24 CHAIRMAN UNDERHILL: Is it possible to get
25 a little more volume? Some of us are old and

1 hard of hearing.

2 AUDIO TECH: (Complied.)

3 CHAIRMAN UNDERHILL: Thank you.

4 Okay. A motion to approve the minutes?

5 DR. NABERHAUS: So moved.

6 CHAIRMAN UNDERHILL: Dr. Naberhaus moved.

7 DR. MAULE: Second.

8 CHAIRMAN UNDERHILL: Dr. Maule seconds.

9 THE REPORTER: Dr. Maule, your microphone's
10 not on. Thank you.

11 CHAIRMAN UNDERHILL: Any further
12 discussion? (No response.)

13 Hearing none, all in favor say aye. (Board
14 members responded.)

15 Opposed? (No response.)

16 That motion carries.

17 Then we'll go and move to our -- Item
18 No. 3, Final Order Action, and the Motion of
19 Determination of Waiver and For Final Order.

20 DR. KING: Mr. Chairman, a point of order.
21 The minutes of the teleconference call on
22 September 11th, should we approve those?

23 CHAIRMAN UNDERHILL: I thought we approved
24 them both at the same time; you can do them
25 individually.

1 All right. Thank you have a motion to move

2 --

3 DR. KING: Well on -- the only thing I was
4 going to ask, I'm not sure if this needs to be
5 included in the minutes, but I did ask to be
6 excused from that teleconference call and there
7 was no notation of that, so I don't know if
8 that's something that is normally included in
9 the minutes.

10 DR. KAPLAN: We didn't actually talk about
11 that. We didn't approve him for being approved
12 to be absent. We didn't do what we just did for
13 Ms. McNaughton.

14 CHAIRMAN UNDERHILL: Do we need to do that
15 --

16 DR. KAPLAN: Retroactive?

17 MS. RODGERS: We should, yes.

18 DR. KAPLAN: I retroactively motion that we
19 excuse Dr. King from the last month's
20 teleconference.

21 CHAIRMAN UNDERHILL: All right. Dr. Kaplan
22 moves. Second?

23 DR. NABERHAUS: Second.

24 CHAIRMAN UNDERHILL: Second by
25 Dr. Naberhaus. Discussion? (No response.)

1 All in favor say aye. (Board members
2 responded.)

3 Opposed? (No response.)

4 Motion carries.

5 And then do you want to move the approval
6 for the minutes for the telephone conference?

7 DR. KING: So moved.

8 CHAIRMAN UNDERHILL: Moved by Dr. King.

9 DR. KAPLAN: And I'll second it.

10 CHAIRMAN UNDERHILL: Seconded by
11 Dr. Kaplan.

12 Discussion? (No response.)

13 All in favor say aye. (Board members
14 responded.)

15 Opposed? (No response.)

16 Thank you very much. Now we can move on to
17 Item No. 3.

18 MS. RODGERS: Yes.

19 CHAIRMAN UNDERHILL: I apologize for that.
20 Ms. Jones.

21 MS. JONES: Thank you Mr. Chair. This is
22 Elana J. Jones, presenting Agenda Item 3, and
23 these are cases that are being presented before
24 the Board for determination of waiver, as well
25 as an informal hearing. And it's the Department

1 of Health versus Navindrah Singh, in Case
2 Nos. 2013-12701 and 2013-08778.

3 Just to note, Mr. Presnell is recused from
4 discussion based on his participation in the
5 Probable Cause process.

6 The Administrative Complaints in the two
7 cases are as follows, or they allege the
8 following violations.

9 In 2000 -- in Case No. 2013-12701, the
10 Administrative Complaint charges the Respondent
11 with a violation of Section 463.016, Subsection
12 (1)(r), Florida Statutes, by failing to pay a
13 \$3,000 fine and costs in the amount of \$1,760.54
14 within 60 days of the Final Order as mandated by
15 the Board.

16 And the Final Order in Case Nos. 2013-02282
17 and 2000 -- excuse me -- 2012-02282 and
18 2012-02833.

19 In Case No. 2013-08788 the Administrative
20 Complaint against the Respondent charges him
21 with a violation of Section 463.016, Subsection
22 (1)(h) through a violation of Rule 64B13-3.0003,
23 Subsection (7), Florida Administrative Code by
24 failing to publish notice of the closing of his
25 office.

1 Service of both Administrative Complaints
2 was accomplished by publication in July 2014.
3 To date Respondent has not submitted an Election
4 of Rights form in either case. Nor has he
5 submitted any responsive pleading in either case
6 to the Administrative Complaints; and as a
7 result he has waived his right to a formal
8 hearing.

9 Thus the Department is requesting that the
10 Board find -- excuse me -- make a finding that
11 the Respondent was properly served with the
12 Administrative Complaint in both cases, Case
13 Nos. 2013-12701 and 2013-08778, and has waived
14 his right to a formal hearing. And we're
15 requesting a motion from the Board to that
16 effect.

17 MR. HARRIS: Ms. Jones, for the record
18 could you state how he was served?

19 MS. JONES: He was served -- as I stated
20 previously, he was served by publication.

21 MR. HARRIS: Perfect.

22 MS. JONES: Uh-huh. That was in July of
23 2014.

24 CHAIRMAN UNDERHILL: So we need a motion?

25 DR. NABERHAUS: I would be glad to so move,

1 that we -- the motion would be that we, I guess,
2 waiver the -- tell me again?

3 First we've got to waiver the rights
4 because he didn't elect any rights, correct?

5 MR. HARRIS: No.

6 MS. JONES: That's correct.

7 MR. HARRIS: To find that he was properly
8 served and then failed to file the responsive
9 proceeding, and therefore waived his rights to
10 request a hearing.

11 DR. NABERHAUS: So moved.

12 DR. MAULE: I'll second that he was
13 properly served.

14 MR. HARRIS: And the waiver?

15 DR. MAULE: And the -- oh, yes. The waiver
16 as well, yes. Thanks.

17 CHAIRMAN UNDERHILL: So we have a motion
18 and a second. Any discussion, Board? (No
19 response.)

20 Hearing none, all in favor say aye. (Board
21 members responded.)

22 Opposed? (No response.)

23 Okay. Ms. Jones?

24 MS. JONES: The Department also requests
25 that the Board find that the material facts as

1 alleged in the Administrative Complaints in
2 Case Nos. 2013-12701, as well as 2013-08778 are
3 not in dispute, and we're requesting that the
4 Board adopt the Findings of Fact in those
5 Administrative Complaints as the Findings of
6 Facts of the Board in this proceeding.

7 DR. KING: So moved.

8 DR. KAPLAN: And I'll second it.

9 CHAIRMAN UNDERHILL: Any discussion? (No
10 response.)

11 Hearing none, all in favor say aye. (Board
12 members responded.)

13 Opposed? (No response.)

14 Ms. Jones?

15 MS. JONES: The Department is requesting
16 that the Board adopt the Allegations of Law in
17 the Administrative Complaints in
18 Case Nos. 2013-12701 and 2013-08778 as the
19 Board's Conclusions of Law in this proceedings.

20 DR. KING: So moved.

21 DR. NABERHAUS: Second.

22 CHAIRMAN UNDERHILL: Dr. King moves and
23 Dr. Naberhaus seconds.

24 Discussion? (No response.)

25 All in favor say aye. (Board members

1 responded.)

2 Opposed? (No response.)

3 Ms. Jones?

4 MS. JONES: The Department requests that
5 the Board adopt the materials under Section 3
6 concerning Case Nos. 2013-12701, as well as
7 2013-08778, along with any addenda materials
8 into evidence in this proceeding.

9 DR. NABERHAUS: So moved.

10 DR. KAPLAN: Second.

11 CHAIRMAN UNDERHILL: Dr. Naberhaus moves.
12 Dr. Kaplan seconds.

13 Discussion? (No response.)

14 All in favor say aye. (Board members
15 responded.)

16 Opposed? (No response.)

17 MS. JONES: The Department also requests
18 that the Board find that the Respondent is in
19 violation of Florida statutes as charged in the
20 Administrative Complaints in
21 Case Nos. 2013-12701, as well as 2013-08778.

22 DR. KING: So moved.

23 DR. NABERHAUS: Second.

24 CHAIRMAN UNDERHILL: Motion by Dr. King.
25 Seconded by Dr. Naberhaus.

1 Discussion? (No response.)

2 All in favor say aye. (Board members
3 responded.)

4 Opposed? (No response.)

5 MS. JONES: With regard to penalty the
6 Department is recommending that the Respondent's
7 license be revoked.

8 The recommendation comes due to the nature
9 of the violations. The Respondent has not
10 complied with the previous orders of the Board;
11 he hasn't given notice of his office closings.

12 As a result, the patient has no way to
13 retrieve his records. He hasn't responded in
14 any way to any of the pleadings of the
15 Department. And as a result, we believe that
16 his license should be revoked.

17 That would be our recommendation.

18 CHAIRMAN UNDERHILL: Motion, Board?

19 DR. NABERHAUS: So moved.

20 MR. HARRIS: This is your Board Counsel.
21 For purposes of making a clean record, I think
22 revocation is the top of the guideline. You do
23 have a disciplinary Rule 64B13-15.007, which
24 contains aggravating and mitigating factors.
25 And it might be in order to make sure the record

1 is as clean as it could be, appropriate to put
2 in the record some of those aggravating factors
3 that justify the revocation of the Respondent's
4 license.

5 And I would point out that looking through
6 the Rule, "Danger to the public, length of time
7 of since the violation. The number of times the
8 licensee has been previously disciplined by the
9 Board."

10 We're here because he failed to comply with
11 a final order that was discipline. So this is
12 the second and third disciplinary cases.

13 "Length of time the licensee has practiced. The
14 actual damage, physical or otherwise, caused by
15 the violation." And as the prosecutor has said,
16 nobody can get their medical records. That's
17 probably a pretty big deal.

18 The deterrent effect of the penalty
19 imposed. He's not responding to you. He hasn't
20 paid a previous fine. Clearly, you know,
21 another fine isn't going to do the job.

22 "Any effort at rehabilitation by the
23 licensee." Clearly the licensee hasn't
24 responded to you all in any way. So, therefore,
25 there don't appear to be efforts towards

1 rehabilitation.

2 "Attempts by the licensee to correct or
3 stop violation by -- or refusal to correct or
4 stop violation." He hasn't, you know, published
5 notices. We don't know where the records are.
6 He basically ignored the patients for, what, a
7 period of about eight months.

8 "Actual negligence of the licensee
9 pertaining to the violation. Penalties imposed
10 for related offenses. And any other relevant,
11 aggravating or mitigating factors."

12 I think if you consider those factors it
13 clearly shows there are a number of aggravators
14 here that would justify the Board imposing a
15 penalty of revocation. And I would suggest that
16 whatever motion you make, you might want to
17 include a recognition of those aggravating
18 factors.

19 DR. KAPLAN: Shall we -- do we need to
20 actually do the 6413-5.00(7)(1), and then all
21 the subcategories?

22 MR. HARRIS: No. I've read off several.
23 If you agreed with that you could say we've --
24 we've reviewed -- the motion could be, you know,
25 "I've reviewed the aggravating factors and those

1 factors as enumerated exist, and therefore
2 justify the penalty of revocation."

3 DR. NABERHAUS: Mr. Harris, can we make the
4 motion and then have discussion -- discussion
5 would be a part of that?

6 MR. HARRIS: Absolutely.

7 DR. NABERHAUS: Okay. So moved.

8 CHAIRMAN UNDERHILL: Discussion?

9 DR. NABERHAUS: Just for the record I think
10 -- Mr. Harris says it's important to notate that
11 we've all reviewed from pages, I guess, 13, all
12 the way through page 249 of numerous attempts to
13 contact, to discipline and to help this
14 practitioner of which there was no response.

15 DR. KAPLAN: And to include the addendums.

16 DR. NABERHAUS: Yes. The addendum as well.

17 Also, too, just for discussion. Question.
18 When the Department takes the license away where
19 does the Department stand with the ability to
20 continue to try to collect the fines and the
21 costs to the State of Florida for this?

22 At that point, does it become null and
23 void? Does this stay as judgement against this
24 particular person? What happens from here?
25 Because once we take his license we have no

1 jurisdiction over the individual.

2 MR. HARRIS: That's correct. It's sort of
3 a pickle. It's not a judgment.

4 What happens is PSU, the Department will
5 make a number of efforts to try to collect that.
6 At some point they end up referring it to a
7 collections agency.

8 DR. NABERHAUS: Okay.

9 MR. HARRIS: It often is the -- you often
10 hear after a revocation the prosecution will
11 withdraw any kind of a motion for fees and
12 costs. And the reason why is it ends up costing
13 the Department and the State of Florida a lot
14 more money to try to collect it, than they ever
15 get once the license is revoked.

16 DR. NABERHAUS: Good money after bad.

17 CHAIRMAN UNDERHILL: Ms. Jones?

18 MS. JONES: I was going to say in agreement
19 with you that's -- typically we'll ask for
20 costs, but sometimes -- many times the boards
21 will often waive because the effort to get the
22 money outweighs the actual money itself.

23 So we ask for it, but it's up to the Board
24 to determine whether or not they want us to
25 pursue it.

1 DR. NABERHAUS: In continuing the
2 discussion, is it important to put into the
3 motion or into the final -- into the final
4 judgment, or whatever the proper term is, that
5 this somehow stay attached to this person's file
6 should they reapply for license, retake the exam
7 or whatever, so that this comes back.

8 Do we need to have that in? Or is that
9 just obvious by --

10 MR. HARRIS: This will stay apart of his,
11 you know -- I hate the term permanent record --

12 DR. NABERHAUS: Right.

13 MR. HARRIS: -- but were he to reapply, not
14 only would this disciplinary history come up,
15 but the fact that he had not paid those fines
16 will be showing in the Department's database --

17 DR. NABERHAUS: So we would still have --

18 MR. HARRIS: -- and he would be held
19 accountable for that.

20 DR. NABERHAUS: Thank you.

21 DR. KAPLAN: On the Addendum, page 22, the
22 Voluntarily Relinquishment of License, this was
23 -- this was something that was given to him as
24 an opportunity; is that correct? (No response.)

25 So can -- you know, with all these

1 different things, it basically said that they
2 will never reapply, et cetera, et cetera.

3 Does that -- I mean, can we add that to the
4 revocation in general?

5 MR. HARRIS: No. Well, you can do anything
6 you want. I would suggest you not --

7 DR. KAPLAN: Not do it.

8 MR. HARRIS: -- try to put language in
9 there so that he can never reapply.

10 I mean, let's face it. If this guy comes
11 back and wants to reapply for license, he's
12 going to have a tough road to hoe with these
13 disciplinary violations to convince you he's
14 safe to practice.

15 If he doesn't pay those fines and fees, I
16 can't imagine this Board would -- would grant
17 him a license. And all of this, including the
18 Final Order that I draft, will be part of the
19 record that will be before you if he ever tries
20 to come back.

21 CHAIRMAN UNDERHILL: Any further
22 discussion? (No response.)

23 All in favor say aye. (Board members
24 responded.)

25 Opposed? (No response.)

1 Very good. Thank you.

2 MS. JONES: Mr. Chair, we do have a motion
3 for costs for both cases as far as what the
4 Department is requesting. Of course it's up to
5 the Board whether or not they want to accept it
6 or not.

7 The motions for Case No. 2013-12701 is for
8 costs in the amount of \$965.83.

9 In Case No. 2013-08778, the amount of costs
10 would be \$1,750.87.

11 That would be a total of \$2,716.70 to be
12 paid within 90 days of the Order. And of
13 course, the Department will defer to the
14 pleasure of the Board as to whether those costs
15 will be granted.

16 DR. KAPLAN: I'll make a motion for that.

17 DR. NABERHAUS: Second for discussion.

18 Again, just one of those things where we
19 want to have it on the record so if this person
20 comes back, but I don't know how much the
21 Department wants to spend pursuing this because
22 it's a pretty dead trail.

23 DR. KAPLAN: And would it be prudent to
24 just turn it over to collections after the 90
25 days if he didn't pay it, the 900-and-change?

1 Because that's a secondary fine, correct? Or a
2 secondary amount of money.

3 The first, the 1,700, was previous money.
4 The new 900 would have to kind of go through a
5 90-day window probably?

6 MS. JONES: I would assume the previous
7 costs could be pursued because that was a final
8 order. But this motion just includes the
9 current costs for the two cases that are before
10 you, but I would imagine any of those could be
11 pursued.

12 MR. HARRIS: But, yes. The Department
13 would start from scratch if you imposed costs.
14 In this case, they'd start from scratch with
15 trying to make an effort to collect them; trying
16 to find them. If they couldn't they basically
17 then refer it to a collections agency.

18 So we already have the previous costs out
19 there, they've been through that process.

20 MS. JONES: Right.

21 MR. HARRIS: This would be a whole new
22 process and would require some significant
23 amount of time by the Department to try to go
24 through all those steps before they could refer
25 it to collections.

1 DR. NABERHAUS: What would staff recommend?

2 MS. RODGERS: Generally the cost for
3 collection outweighs what you're going to
4 recovery.

5 DR. NABERHAUS: The cost. For the \$900.

6 CHAIRMAN UNDERHILL: But if you don't have
7 that and the applicant reapplies, it's lost.

8 DR. NABERHAUS: Still got all the other
9 part, though.

10 CHAIRMAN UNDERHILL: So there is a motion
11 to approve the cost, and a second. Okay.

12 Any further discussion? (No response.)

13 Hearing none, all in favor say aye? (Board
14 members responded.)

15 Opposed? (Board member responded.)

16 Okay. Let's do it this way.

17 All in favor say -- raise your right hand.

18 I've got one, two in favor.

19 DR. KAPLAN: (Raised hand.)

20 CHAIRMAN UNDERHILL: (Raised hand.)

21 All opposed?

22 DR. MAULE: (Raised hand.)

23 DR. NABERHAUS: (Raised hand.)

24 DR. KING: (Raised hand.)

25 CHAIRMAN UNDERHILL: The motion fails.

1 MS. JONES: And as far as these cases are
2 concerned, sir, we have nothing further to
3 present.

4 CHAIRMAN UNDERHILL: Thank you very much.
5 So do you have any further prosecution
6 report?

7 MS. JONES: Yes, I do, sir.

8 CHAIRMAN UNDERHILL: Okay.

9 MS. JONES: You've been given our
10 prosecution report for the inventory of the
11 cases. As of today, currently as far as cases
12 that are currently under legal review, we have
13 -- we have eight cases that are under legal
14 review. Cases awaiting a probable cause
15 determination total nine. Cases where probable
16 cause has been found are four. And I believe
17 that brings us to a total of 21 cases.

18 So the total number of open active cases in
19 PSU are 21 and not 14.

20 Of those 21 cases, two cases are -- we have
21 two cases where litigation has been requested.

22 We have -- with regard to the year-old
23 cases, cases that are over -- that are a year
24 old or over, we have three cases that are 2012
25 cases, and we have six cases that are 2013,

1 bringing us to a total of nine-year-or-older
2 cases.

3 And the Department is requesting leave from
4 the Board to continue -- to continue to pursue
5 prosecution of the year-old cases.

6 DR. KAPLAN: I make a motion for that.

7 DR. NABERHAUS: Second.

8 CHAIRMAN UNDERHILL: And any discussion?

9 DR. NABERHAUS: Yes. Can you tell us why
10 has it taken so long? Is it just --

11 MS. JONES: As far as --

12 DR. NABERHAUS: Why are they longer than a
13 year, some of these cases?

14 MS. JONES: Some of them just switched over
15 to a year. Some of the -- it depends on when we
16 get them into our office. So it may appear that
17 it's been with us for a year, but actually it's
18 probably been with the Department period over a
19 year.

20 And some of the cases they were kind of
21 hard to move and we're probably going to be
22 pursuing DOAH in a couple of these cases soon.

23 DR. NABERHAUS: Okay.

24 CHAIRMAN UNDERHILL: And all in favor of
25 the motion say aye. (Board members responded.)

1 Opposed? (No response.)

2 Okay. The motion carries.

3 I have to ask, and I hate to ask this
4 question; is Dr. McClain actively involved in
5 all these cases?

6 MS. JONES: From what I understand, from
7 what -- what we do is we look in our system and
8 we check to see if there as been a consultant
9 review, and every case that I have checked there
10 has been a consultant review on the case.

11 CHAIRMAN UNDERHILL: Thank you.

12 MS. RODGERS: And if I could add something.
13 I met, after our last Board meeting, with the
14 new Chief for the Enforcement, and also for his
15 new -- I'm not quite sure what his title is over
16 Consumer Services, which is where your -- your
17 complaints start. And I also met with Lucy Gee.

18 They were also under the impression that
19 every case was being reviewed by your
20 consultant.

21 I showed them the numbers that we can up
22 with that Ms. Jones gave us last time. They did
23 another review, discovered we were correct; they
24 were not sending everything to the consultant.
25 And they have made me an affirmative promise

1 that everything now will go to the consultant
2 first.

3 So we've at least made a little bit more
4 progress in getting them to understand their
5 impression is not accurate.

6 DR. NABERHAUS: Mr. Chairman, can I ask
7 Ms. Jones in the interest in making things
8 quicker, so -- you know, I know things can get
9 bogged down in the legal system. But have you
10 personally worked with Dr. McClain on any of
11 these cases?

12 MS. JONES: I have.

13 DR. NABERHAUS: Okay. And do you know if
14 the investigative services have worked with
15 Dr. McClain on any of these cases to help
16 streamline the process?

17 MS. JONES: As I said, when I look in the
18 system and I see that an expert in-house
19 consultant review has been requested, and then
20 an in-house consultant review has been received,
21 that means that he's seen it and he's actually
22 given them some sort of --

23 DR. NABERHAUS: Direction or --

24 MS. JONES: -- direction. Exactly.

25 DR. NABERHAUS: Would you say that it's

1 been helpful -- Dr. McClain helping you in any
2 of this in any way in terms of what you're -- on
3 your -- as far as PSU goes?

4 MS. JONES: Absolutely.

5 DR. NABERHAUS: Okay. Thank you.

6 CHAIRMAN UNDERHILL: All right. Thank you
7 very much.

8 Anything else?

9 MS. JONES: Mr. Chair, that's all we have.
10 Thank you.

11 CHAIRMAN UNDERHILL: Thank you very much.

12 All right. We'll move on to Item 5 on our
13 Agenda, and that's the Ratification of Licensure
14 found on page 255. These are the people that
15 have been issued licenses and we need a motion
16 to approve them.

17 DR. KING: So moved.

18 DR. KAPLAN: And I'll second it.

19 CHAIRMAN UNDERHILL: Dr. King moved.

20 Dr. Kaplan seconds.

21 Any discussion? (No response.)

22 Hearing none, all in favor say aye. (Board
23 members responded.)

24 Opposed? (No response.)

25 Okay. Then we have Ratification of the

1 Optometry Faculty Certificate on 258.

2 There are no names there.

3 MR. HARRIS: Yeah.

4 CHAIRMAN UNDERHILL: Anywhere. Am I on the
5 wrong page? 256. 258.

6 MR. HARRIS: You're right. The numbers are
7 there, but not the names.

8 MS. ROGERS: I apologize. I missed that.

9 CHAIRMAN UNDERHILL: It's Dr. Blank, Blank,
10 Blank, Blank and Blank.

11 DR. KING: Is there anyway that y'all could
12 print those up and -- and have it to us before
13 the end of the meeting?

14 MS. RODGERS: Yes.

15 DR. KING: Because I'd hate to approve a
16 number instead of a name.

17 MS. RODGERS: Yes, we can.

18 CHAIRMAN UNDERHILL: Okay. So we can defer
19 that and come back to it. How about somebody
20 please remind me to do that.

21 MS. RODGERS: Yeah.

22 CHAIRMAN UNDERHILL: When you get that
23 information if you'll just let me know.

24 MS. RODGERS: Yes.

25 CHAIRMAN UNDERHILL: And then we can go

1 back to it.

2 Chair and Vice-Chair Report, New Business
3 on 259, I guess. A letter from the National
4 Board of Examiners. They're a little behind
5 because it was addressed to Dr. Deterding.

6 And I guess this is a -- a letter notifying
7 the Board that there is a CPDO examination
8 developed by the NBEO that's available to us
9 should we choose to want to use it for some
10 reason.

11 And I guess that's just basically for
12 information purposes?

13 MS. RODGERS: Yes.

14 CHAIRMAN UNDERHILL: Any discussion on that
15 at all?

16 DR. KING: It's about half -- half as
17 expensive and half as tough in terms of their
18 maintenance as is the American Board of
19 Optometry certification when you compare the
20 two. So anybody looking to Board certified --

21 CHAIRMAN UNDERHILL: I guess we're notified
22 that they're in the game.

23 DR. KING: Right.

24 CHAIRMAN UNDERHILL: All right. And then
25 there were some changes to the DEA drug

1 schedules.

2 MS. RODGERS: And again, that's just for
3 informational purposes.

4 CHAIRMAN UNDERHILL: Information. The
5 narcotics, I think --

6 MS. RODGERS: Yes.

7 CHAIRMAN UNDERHILL: -- is the one that
8 really changed, and it's still left I think.
9 The only one that you can prescribe via
10 electronic or phone call is the Tylenol 3;
11 everything else has to be --

12 DR. KING: (Unintelligible) schedule --

13 CHAIRMAN UNDERHILL: -- written.

14 DR. KING: -- correct.

15 CHAIRMAN UNDERHILL: And so you can't phone
16 any of those things in, but those we didn't have
17 on our schedule anyway. But so noted that the
18 changes -- the DEA change for -- what were they,
19 Schedule 2 drugs?

20 MS. RODGERS: Yes.

21 CHAIRMAN UNDERHILL: One's just
22 experimental, isn't it? Aren't there one
23 experimental?

24 MR. PRESNELL: Schedule 1 is experimental.

25 CHAIRMAN UNDERHILL: So the Schedule 2

1 drugs changed, none of which really affected us.

2 DR. NABERHAUS: Okay. So if I hear you
3 correctly, none of this is going to affect our
4 particular oral status, correct?

5 CHAIRMAN UNDERHILL: That's the way I --

6 DR. NABERHAUS: Okay.

7 CHAIRMAN UNDERHILL: -- perceive it.

8 And then that brings us to the Inclusion of
9 a New Product on the formulary down on page 261,
10 and going forward from there. NovaBay i-Lid
11 Cleanser, correct?

12 MS. RODGERS: Yes.

13 CHAIRMAN UNDERHILL: So they have requested
14 that that be added to the topical ocular
15 pharmaceutical list.

16 Any -- a motion to approve? I think it
17 went through and met all the criteria that's
18 required.

19 DR. NABERHAUS: Dr. Underhill, I'll move to
20 approve, but would you like to have them come
21 forward to kind of give us a little information.

22 CHAIRMAN UNDERHILL: Do you have questions
23 for them?

24 DR. NABERHAUS: Yes.

25 CHAIRMAN UNDERHILL: Okay.

1 DR. KAPLAN: I'll second with -- I'll
2 second.

3 CHAIRMAN UNDERHILL: And Dr. Naberhaus
4 moves to approve; Dr. Kaplan seconds. And then
5 we can have discussion.

6 So, gentlemen, if you would like to come
7 forward. I think the Board has a few questions
8 and you may be able to provide some additional
9 information. Thank you.

10 MR. MORO: Thank you.

11 THE REPORTER: What's your name, sir?

12 MR. MORO: My name is Glen Moro.

13 THE REPORTER: M-O-R-R --

14 MR. MORO: M-O-R-O.

15 CHAIRMAN UNDERHILL: And what's your
16 relationship to the company?

17 MR. MORO: I'm the Vice President of Sales
18 and Marketing.

19 CHAIRMAN UNDERHILL: Thank you.

20 Dr. Naberhaus?

21 DR. NABERHAUS: Well, I was just curious.
22 First off, is this -- and maybe you can clarify
23 for us in terms of what it's status is as far as
24 being a prescriptive item; obviously a legend
25 drug. Is that how this is --

1 DR. MORO: This is classified as a 510(k)
2 medical device available through prescription.
3 I guess the best analogy would be a contact
4 lens.

5 DR. NABERHAUS: Okay. So I assume this
6 will be available through pharmacies or is this
7 mail order or is this --

8 MR. MORO: This is available through
9 pharmacies, mail order and is for sale in a
10 professional's office.

11 DR. NABERHAUS: Okay. I see in here it has
12 a pH of 4, but yet your -- your literature --
13 and I'm not familiar with the product; I've not
14 used it. It claims to be a smooth and gentle
15 non-irritating product. A pH of 4 seems like
16 that's not going to be consistent with that
17 statement.

18 MR. MORO: Sure. Let me -- let me clarify
19 for you.

20 This product is based on hypochlorous acid,
21 which is included in neutrophil cells in our
22 bodies. It oxidizes it very quickly. So upon
23 application, the HOCL oxidizes almost
24 immediately. So all you're left with is saline.

25 DR. NABERHAUS: So as far as we can tell,

1 or at least from your literature, this doesn't
2 really have any -- it shouldn't have any
3 warnings as far as corneal burns or irritation
4 or --

5 MR. MORO: That's correct.

6 DR. NABERHAUS: -- that's correct. Okay.
7 Thank you.

8 CHAIRMAN UNDERHILL: Where would we list
9 this? Under what category? And would it be
10 better to approve the individual ingredients?

11 MR. MORO: (Not using microphone.)

12 THE REPORTER: Your microphone's not on.

13 CHAIRMAN UNDERHILL: Would you consider
14 this to be antimicrobial, antiinflammatory?

15 MR. MORO: Well we learned from studies on
16 hypochlorous acid within the body; it plays
17 three vital roles. It's an antimicrobial. It
18 also acts as an antiinflammatory, both
19 (unintelligible) that are released from the
20 body. It also neutralizes toxins that are
21 released from pathogens. And it also works on
22 biofilms.

23 So those are really the three functions
24 that we've identified invitro and we know this
25 is how it works in the neutrophil cells in the

1 body.

2 DR. KAPLAN: It might -- might just suit
3 under miscellaneous.

4 DR. MAULE: I was going to suggest that.

5 DR. KAPLAN: Yeah, Sub 9.

6 DR. MAULE: Uh-huh.

7 CHAIRMAN UNDERHILL: Then the question
8 would be do we want to list it under the brand
9 name, or do we want to list it underneath the
10 individual ingredients?

11 MR. HARRIS: And I know most -- you know,
12 the last time you amended this you went through
13 and cleaned everything up to list the -- you
14 know, the scientific chemical names and stuff of
15 everything, and you took most of the brand names
16 out.

17 It doesn't mean you couldn't do it this
18 time, but when you went through and did a
19 cleanup, you tried to take as many trade names
20 out as you could.

21 CHAIRMAN UNDERHILL: And then would you
22 want to approve it as an individual or a
23 combination?

24 DR. NABERHAUS: John is approaching.

25 CHAIRMAN UNDERHILL: And, Mr. Griffin, do

1 you have comments?

2 MR. GRIFFIN: (Not using microphone.)

3 THE REPORTER: You'll need to use the
4 microphone. Thank you.

5 MR. GRIFFIN: John Griffin on behalf of the
6 Florida Optometry Association.

7 We're not -- we're not here in opposition;
8 I want to make that clear up front.

9 I'm speaking only to ask the Board to
10 consider whether this is in fact a
11 pharmaceutical agent.

12 My understanding is, and perhaps Mr. Moro
13 can clarify that, that it's not being regulated
14 by the FDA as a pharmaceutical agent; it's a
15 medical device. And that, in my mind, triggers
16 is there a need to put it on the formulary since
17 it is not a pharmaceutical agent being regulated
18 by the FDA. It is, as I understand it, a
19 medical device much like Prokera, you know,
20 contact lenses.

21 And if this Board were to determine that
22 its use is properly within the scope of
23 optometry as a medical device, and because it is
24 not apparently being regulated as a
25 pharmaceutical agent by the FDA, but as a

1 medical device, I would raise the issue of
2 whether you need to have it on the formulary.

3 MR. PRESNELL: That was my question as
4 well.

5 I'd like to know is it truly a legend drug.
6 That's -- for me, that's the key. Is it a
7 legend drug? In other words, does it have on
8 that package "Federal law prohibits dispensing
9 without a prescription"?

10 MR. GRIFFIN: It does. It is not available
11 without a prescription. Okay. But again, it is
12 not an NDA. It is not a pharmaceutical product.

13 So it is sanctioned and governed by the
14 same body that looks after medical devices. The
15 same part of the FDA that looks after contact
16 lenses and IOLs also manage this product.

17 CHAIRMAN UNDERHILL: Is sodium fluorescein
18 on our familiarly?

19 MR. PRESNELL: Sodium chloride and
20 fluorescein?

21 CHAIRMAN UNDERHILL: Sodium fluorescein.

22 MR. HARRIS: I don't --

23 CHAIRMAN UNDERHILL: I know it used to be.

24 DR. NABERHAUS: Fluorescein paper strips,
25 so --

1 CHAIRMAN UNDERHILL: I think it falls into
2 that same listing as --

3 DR. NABERHAUS: Diagnostic products is --
4 was what that's underneath. I don't know, but I
5 guess we'll -- the question is if we don't have
6 to load up the formulary, we don't want to, but
7 on the other hand we want everybody to be able
8 to use it. So we'll defer to counsel here.

9 What's -- what do we need to do here.

10 DR. KAPLAN: We also have to have -- we
11 have to have contact lens -- contact lenses is
12 in on our rules. I mean, we have that. We also
13 had to go through the whole Prokera thing.

14 I'm mean, we've -- we've gone through other
15 things that are devices -- you know, so called
16 devices that are Rx'd.

17 MR. HARRIS: I think Mr. Griffin is
18 correct.

19 If it's not a pharmaceutical, it's not a
20 legend drug. I'm not sure how you would add it
21 to the -- you know, the formulary of topical
22 pharmaceutical -- I mean, it's the TOPA, topical
23 ocular pharmaceutical agents.

24 If this is a medical device, then it
25 wouldn't be a pharmaceutical agent, and

1 therefore it should not be included on the
2 formulary.

3 I think what you could do is either -- you
4 know, if you guys think it's something that --
5 first of all, you all think that you need to
6 approve its use by optometrists, and I don't
7 know how, you know, contact lenses work -- but
8 -- or medical devices in your field work. But
9 presumably you all can, as doctors and
10 prescribers, you can prescribe these medical
11 devices that are within your scope of practice
12 without having the Board specifically say "this
13 contact lens is okay," or this -- whatever.

14 You mentioned, Dr. Kaplan, the Prokera
15 issue, and that was because no one was sure
16 whether that was within the scope of practice.
17 And so if the company is concerned that this
18 might -- first of all, they can just go out and
19 sell it, I would think, and say, you now, this
20 is within the scope of practice. And if anyone
21 is concerned about that, they can ask for a
22 declaratory statement to say "is it okay to use
23 this device".

24 The other thing you can do right now is
25 have a discussion among yourselves as to whether

1 you think it's okay or not. That would be on
2 the record.

3 If you all -- and Ms. Jones is sitting
4 here. If you all are talking about it and think
5 that it's okay, and then somebody starts using
6 it and a complaint comes into to CSU, and CSU
7 investigates it and sends it to Investigations,
8 and Investigations thinks there's a problem and
9 send it to Prosecution, Prosecution is going to
10 come back and look at this discussion and say,
11 "No, the Board thinks this is fine. We're not
12 thinking that we should file a complaint against
13 someone."

14 So you have these multiple levels of what
15 to do. I'm not sure it should be on the
16 formulary. You all could certainly discuss
17 among yourselves whether you think it should be
18 used or not, and that would not be binding.

19 If the company wants a binding decision
20 from you, I don't think they have standing to
21 apply for one, but as we did with Prokera, a
22 doctor who wanted to use it asked for a
23 declaratory statement and said, "Can I use
24 this?"

25 The other option is to add it to the rule

1 somehow. You know, we could find a rule and you
2 all could conduct rule making to discuss, you
3 know, this device or medical devices in general.

4 But, I mean, if it's truly analogous to a
5 contact lens, how does the profession deal with
6 new contact lenses, or things like that?

7 I mean, what happens if somebody comes out
8 with, you know, a progressive -- I'm making this
9 up -- a progressive contact lens. You know,
10 "You don't need bifocals. I have this
11 progressive contact lens." How would the
12 profession handle that product?

13 DR. NABERHAUS: Yeah.

14 MR. PRESNELL: My other question was sell
15 in office. I think you mentioned that -- that
16 it could be sold by the optometrist.

17 MR. MORO: If they choose to.

18 MR. PRESNELL: Pardon?

19 MR. MORO: If they choose to, yes.

20 CHAIRMAN UNDERHILL: Okay. How do you --
21 how do you then -- yeah.

22 How do you thin provide to a patient other
23 drugs that -- that are legend drugs? Is that
24 considered dispensing or do you sell it right
25 out.

1 MR. MORO: That's dispensing. You have be
2 a dispensing practitioner.

3 MR. PRESNELL: I would -- I would suggest
4 to you then it could be provided, but it would
5 be provided as a dispensed product. There's a
6 big distinction there.

7 CHAIRMAN UNDERHILL: I think most
8 optometrists in the state would elect to write a
9 prescription and have it filled by a pharmacy.

10 MR. MORRO: Well again, you know, it's up
11 -- it's up to the practice. We make it
12 available to the practice --

13 CHAIRMAN UNDERHILL: Right.

14 MR. MORO: -- if they wish to sell it to
15 their patients. It's also available through
16 pharmacy, and it's also sold on the internet
17 with a prescription.

18 DR. NABERHAUS: Well, Mr. Harris, as far as
19 -- I see what you're saying with the contact
20 lens part of it, and I think the scope of
21 practice of optometry is assumed to be contact
22 lenses and any products that come forward that
23 are approved by the FDA, are allowed to be, you
24 know, within the scope of practice of optometry.

25 This is a little different animal. So

1 whatever we do I think we should make sure that
2 we're clear so that we don't have a challenge or
3 have a problem. And --

4 CHAIRMAN UNDERHILL: Mr. Griffin, do you
5 remember --

6 DR. NABERHAUS: -- on the formula --

7 (CROSSTALK.)

8 CHAIRMAN UNDERHILL: -- if sodium
9 fluorescein's on the formulary?

10 MR. GRIFFIN: Fluorescein strips is on the
11 formulary.

12 UNIDENTIFIED SPEAKER: Yes.

13 CHAIRMAN UNDERHILL: Fluorescein strips are
14 on the formulary. That also --

15 MR. GRIFFIN: Correct.

16 CHAIRMAN UNDERHILL: -- is not a legend
17 drug, but it was delineated into the formulary
18 to -- to make it clear that that's a product
19 that optometrists could be allowed to use.

20 DR. KAPLAN: Yeah. The fluorescein itself,
21 like the liquid -- it's broken down because
22 you've got the benoxinate in there; you have the
23 anesthetic in there. So that's a separate --

24 CHAIRMAN UNDERHILL: But I thought
25 fluorescein strips are in there, too.

1 DR. KAPLAN: -- and if you look at --

2 MR. GRIFFIN: They are.

3 DR. KAPLAN: Right. Fluorescein and paper
4 strips are separate. It's diagnostic product.
5 Local anesthetic benoxinate is on there.

6 CHAIRMAN UNDERHILL: So there are some
7 non-legend drugs on that formulary.

8 DR. MAULE: Uh-huh.

9 DR. NABERHAUS: In light of the fact that I
10 think it's going to be confusion, I think we
11 should go ahead and put it on the formulary. If
12 anybody doesn't have any objections or it's a
13 big problem, so that it's -- I think it's going
14 to be clearer. It may not be a perfect fit, but
15 at least it's going to be clearer, and I think
16 that's the reason for doing it. So that it's
17 not hanging out there as -- as a "you know, we
18 don't really know" type of thing.

19 DR. MAULE: I think that makes sense, too,
20 because it's not like it's going to clutter up
21 the formulary much, and for -- for doctors to
22 know that they can utilize it. There are other,
23 you know, lid cleansers out there, but they are
24 not prescription. But since this is required --
25 a prescription is required for this one, I think

1 it makes sense to put it on the formulary.

2 DR. KAPLAN: And that's why we had the
3 miscellaneous --

4 DR. MAULE: Uh-huh.

5 DR. KAPLAN: -- section.

6 DR. MAULE: Yeah.

7 DR. KAPLAN: We have the -- you know, the
8 hydroxypropyl cellulose ophthalmic inserts. I
9 mean, we have certain things that are on there
10 specifically in that miscellaneous category
11 because it really doesn't fit anywhere else.
12 And it does protect the optometrist. Hey, you
13 know, am I going to have a problem writing this
14 prescription?

15 CHAIRMAN UNDERHILL: All right. So I think
16 we're at a point where you can make a motion.

17 UNIDENTIFIED SPEAKER: So moved.

18 CHAIRMAN UNDERHILL: A motion made.

19 MR. HARRIS: Would the motion be to add the
20 saline, point 9 percent sodium chloride and
21 hypochlorous acid, HOCL, point -- zero point 01
22 percent to the miscellaneous category of the
23 formulary. And if that's the case it's going to
24 be rulemaking, so we'll have to --

25 DR. KAPLAN: And we would have to do it in

1 combination. Because we have -- we have -- some
2 of it says solution and gel alone --

3 UNIDENTIFIED SPEAKER: Right.

4 DR. KAPLAN: -- and the combination. So
5 you would have some more --

6 MR. HARRIS: This would be in combination.

7 DR. KAPLAN: In combination.

8 DR. NABERHAUS: Let's also ask this. Is
9 this available in any other percentages?
10 Because the way this is going to be written,
11 it's going to be up to this percent.

12 MR. MORO: It's only available in this --
13 in this concentration for the eye.

14 DR. NABERHAUS: Okay. So it's going to be
15 up to those percentages.

16 CHAIRMAN UNDERHILL: Is there anything in
17 R&D that would change it? I mean, you got
18 anything working that you're going to a
19 different formulation?

20 MR. MORO: Well if we did, we would come
21 back to the Board if it would be a new product.

22 DR. NABERHAUS: Okay.

23 CHAIRMAN UNDERHILL: So you made that
24 motion?

25 DR. NABERHAUS: I made it earlier and then

1 we had discussion. So I think --

2 CHAIRMAN UNDERHILL: And seconded by --

3 DR. KAPLAN: That was me.

4 CHAIRMAN UNDERHILL: -- Dr. Kaplan.

5 Okay. So any further discussion? (No
6 response.)

7 Hearing none --

8 DR. KAPLAN: So that goes rulemaking then.

9 MR. HARRIS: Yes. It -- well, after you
10 vote on this.

11 DR. NABERHAUS: Right.

12 MR. HARRIS: -- we can to that.

13 CHAIRMAN UNDERHILL: Any further
14 discussion? (No response.)

15 All in favor say aye. (Board members
16 responded.)

17 Opposed? (No response.)

18 Hearing none, thank you Mr. Moro.

19 MR. MORO: Thank you.

20 MR. HARRIS: Now if you want to go through
21 the motion. But I think the first motion I
22 would need would be a motion to open Rule
23 64B13-18.002 for development.

24 And then the second part of that motion
25 would be to then propose language which would

1 enact -- you know, which would include the
2 language you just talked about in the rule.

3 So it's a vote to open Rule 18.002 for
4 development and then to propose language as we
5 just discussed.

6 CHAIRMAN UNDERHILL: 18.002?

7 UNIDENTIFIED SPEAKER: Isn't that the
8 formulary?

9 DR. KAPLAN: It's 64B13-18.002, Sub (9),
10 Sub (g).

11 UNIDENTIFIED SPEAKER: Okay.

12 DR. KAPLAN: It would be a new letter.

13 CHAIRMAN UNDERHILL: Right. You made that
14 motion, Dr. Kaplan?

15 DR. KAPLAN: That's my motion.

16 DR. NABERHAUS: Before we make that motion,
17 Mr. Harris, what we just did a moment ago was to
18 approve the formulary. Tell me why we need a
19 new rule or why we have to open the rule.

20 MR. HARRIS: Well the process of making
21 changes to the formulary, remember, is you have
22 to go through rulemaking.

23 And so your formulary is a rule. You've
24 now voted to add an item to the rule -- I mean,
25 to the formulary.

1 DR. NABERHAUS: Right.

2 MR. HARRIS: In order to do that, the
3 process set forth in 463.005(5) it specifically
4 says, "Changes, modifications, additions to the
5 formulary, shall be done through rulemaking."

6 So now we have to go through the checklist
7 steps of a rulemaking issue. So that's opening
8 it for development, proposing language --
9 language. I'll ask you the SERC questions and
10 then I'll go ahead and get back to the office
11 and go through those -- the legal steps of
12 complying with rulemaking.

13 DR. NABERHAUS: Yeah. Because my concern
14 is a young lady by the name of Mrs. Holiday.

15 MR. HARRIS: Uh-huh.

16 DR. NABERHAUS: I'd hate to have this being
17 kicked around for six-eight months a year
18 because of language.

19 MR. HARRIS: I would not think this is a
20 problem.

21 Remember, when we changed 18.001, 2 and 3
22 -- was it six months ago? I think she got my --
23 my sense is she got all of her concerns out at
24 that point. So I would be very surprised if she
25 would try to hold up 18.002 for this one item.

1 Because, really, we're just adding an item and I
2 don't see how she could really object to
3 anything. No.

4 DR. NABERHAUS: I'm guessing, but you're
5 speaking with a lot of confidence, my man.

6 MR. HARRIS: Yeah. Well, she beat us up
7 pretty badly the last time, so I'm not sure
8 there's anything left.

9 I mean -- look, honestly, there's nothing
10 -- I don't think there's anything left in the
11 Chapter 18 that she could really object to.

12 DR. NABERHAUS: Well, if we have to, we
13 have to, so I'll make that motion.

14 CHAIRMAN UNDERHILL: Dr. Naberhaus moves.

15 DR. KAPLAN: Second.

16 CHAIRMAN UNDERHILL: Dr. Kaplan seconds.

17 Any further discussion? (No response.)

18 Hearing none, all in favor say aye. (Board
19 members responded.)

20 Opposed? (No response.)

21 Okay. That motion carries.

22 So now we go to --

23 MR. HARRIS: Yes. Thank you members. You
24 have voted to propose rule language. And as a
25 result of that, you have to consider economic

1 impacts.

2 There are three interrelated questions.

3 The first question is will the proposed
4 rule amendment have an adverse impact on small
5 business?

6 (Board members responded in the negative.)

7 Second. Will the proposed rule amendments
8 be likely to directly or indirectly increase
9 regulatory costs to any entity, including
10 government, in excess of \$200,000 in the
11 aggregate in Florida within one year after the
12 implementation of the rule?

13 (Board members responded in the negative.)

14 The final question is will the rule
15 amendments be likely to increase costs in excess
16 of one million dollars over five years?

17 (Board members responded in the negative.)

18 And the reasons for this is because we are
19 adding an option to the formulary that will
20 allow optometrists to dispense an additional
21 medication which will not have any cost impact
22 on their businesses; is that correct?

23 (Board members responded, all saying
24 "prescribed".)

25 Prescribed. And therefore there shouldn't

1 be any costs impact to small businesses or
2 government or anyone since you're just allowing
3 the opportunity to prescribe an additional
4 product.

5 (Board members responded in the
6 affirmative.)

7 Because I need to put that in the actual
8 rule language.

9 Thank you.

10 CHAIRMAN UNDERHILL: Anything else,
11 Mr. Harris?

12 MR. HARRIS: That's all.

13 MR. MORO: If the Board doesn't mind, I
14 just needed some clarification now.

15 Is it my understanding that the product is
16 approved by the Florida Board?

17 MR. HARRIS: Yes.

18 MR. MORO: And that means immediately
19 doctors can begin to prescribe this product?

20 MR. HARRIS: No. And this is where
21 Dr. Naberhaus was commenting.

22 What has to happen is we have to go through
23 the rulemaking process, and that's got some
24 statutory timeframes. It's 14 days, 21 days, 7
25 days. So right there you're looking at

1 basically a minimum of four -- it's basically a
2 minimum of 45 days. And then, assuming there's
3 no objections to anything, the rule takes -- I
4 think it's -- the formulary is 60 days to kick
5 in by statute? It's not the normal 20 days;
6 it's a longer time period. It think it's 60
7 days before it can become effective. And the
8 idea is to make sure that everyone in the
9 industry knows that there's been a change.

10 So realistically you're looking at probably
11 somewhere around, you know -- in order to be
12 used, probably around a minimum of four months,
13 I would guess, and that's -- that's statutory.
14 There's nothing we can do about that.

15 MR. MORO: So you're telling me I -- they
16 need to wait four months before the product can
17 actually be used by optometrists in Florida.

18 MR. HARRIS: Before an optometrist can
19 prescribe it, correct.

20 Now you can go out and market it and let
21 people know it's going to be coming down the
22 pipe and it's in the process and stuff, but they
23 would want to wait till the rule actually
24 becomes effective before they wrote a
25 prescription for it.

1 CHAIRMAN UNDERHILL: And that's assuming
2 everything goes according to (unintelligible).
3 Because if somebody objects to this and it gets
4 kicked out somewhere else, it could be a longer
5 timeframe.

6 MR. PRESNELL: Will that be on -- will that
7 be published anywhere so that he could find
8 that?

9 MR. HARRIS: Uh-huh. Yeah. So what'll
10 happen is it's going to get published in the
11 Florida Administrative Register. You can
12 contact the Board staff and they can give you --
13 the Board office -- and they can give you the
14 link to how to access it.

15 So what happens is we'll try to get a
16 notice of -- a Notice of Rule Development out
17 fairly quickly. That takes 14 days. If no one
18 objects or requests a hearing after those 14
19 days, then we publish the actual language. That
20 sets a 21-day period for people to actually file
21 written comments or a formal request for a
22 hearing.

23 If none of those are received then we can
24 go ahead and prepare a letter to the -- to
25 basically -- a letter, that takes seven days,

1 and then we can file it for adoption.

2 The day it's filed for adoption starts a
3 60-day clock before it can be effective, and
4 that's in the statutes. So we don't have any
5 authority to -- to shorten that. And these are
6 all statutory issues in the state of Florida.

7 DR. NABERHAUS: Mr. Harris, just for
8 clarification, too. I know we've put it on the
9 formulary; however, you know, since it's not a
10 legend drug, do you think there would be an
11 issue if people were using it based on the fact
12 that it's within the scope of practice of
13 optometry?

14 MR. HARRIS: I would not care to offer an
15 opinion because optometrists are not my client.
16 But if it is -- the discussion is that it's not
17 necessarily a pharmaceutical agent, then I would
18 think that they could have some degree of
19 confidence that they're not going to get popped.
20 But that's -- that's going to be up to them and
21 their legal counsel.

22 MR. MORO: Again, my question then becomes
23 if it's not a pharmaceutical agent, why are we
24 even discussing it here? If it's not a
25 pharmaceutical agent and doesn't fall under the

1 guidelines of an NDA, what is the need to have
2 the Board approval?

3 I'm just trying to understand.

4 DR. NABERHAUS: I think for
5 clarification -- because what you're going to
6 find out is this is the first question
7 everybody's going to ask is the questions we're
8 asking. So I think once it's been approved
9 it'll be -- it'll be rock solid and clear.
10 Right now it's in a grey zone. And I think
11 basically what Mr. Harris is telling is that
12 it's a grey zone.

13 So I think it's up to the individual
14 optometrist when you present that product to
15 them what they want to do. But it will be clear
16 as a bell in about two months, three months,
17 unless we get --

18 MR. MORO: Okay.

19 DR. NABERHAUS: -- clarification. But in
20 the meantime, I think there is reasonable
21 ability to use that product based on the fact
22 that it is not a legend drug.

23 MR. MORO: Good. I want to thank the
24 Board. I think this is going to be the first
25 product -- you'll see a lot of competitors in

1 prescription lid hygiene. So I think it's good
2 that you're having this discussion. There'll be
3 other products like this.

4 Thank you.

5 CHAIRMAN UNDERHILL: Thank you, Mr. Moro.

6 UNIDENTIFIED SPEAKER: Thank you for
7 coming.

8 CHAIRMAN UNDERHILL: All right. So now we
9 can move on to the Executive Director's report.

10 MS. RODGERS: Would you like to go back to
11 the ratifications? I have the --

12 CHAIRMAN UNDERHILL: You got them. Okay.
13 So we'll go back to Item 5 on the agenda, the
14 Optometry Faculty Certificate ratifications on
15 258, which now have names.

16 MS. RODGERS: The first one's Alesha Groce,
17 G-R-O-C-E, which would be No. 64. Jessica
18 Steen, S-T-E-E-N, No. 65.

19 Alesha Groce, No. 64. Jessica Steen,
20 No. 65. Brandon Prete, P-R-E-T-E, No. 66. Hong
21 Hang Dinah, D-I-N-A-H, No. 67. So Yaun Lee,
22 No. 68.

23 CHAIRMAN UNDERHILL: And I'm assuming those
24 were all Nova Faculty Certificates, because it's
25 the only school we got.

1 UNIDENTIFIED SPEAKER: (Not using
2 microphone.)

3 CHAIRMAN UNDERHILL: Maybe you know. You
4 live down there close to them, or closer than I
5 do anyway.

6 DR. KAPLAN: I make a motion to ratify with
7 the -- not really changes, but the adding of the
8 names.

9 CHAIRMAN UNDERHILL: Motion to approve the
10 Faculty Certificates.

11 DR. MAULE: I'll second.

12 CHAIRMAN UNDERHILL: Thank you.

13 Any discussion? (No response.)

14 All in favor say aye. (Board members
15 responded.)

16 Opposed? (No response.)

17 That motion carries.

18 Then we can go back in to the Executive
19 Director's report.

20 MS. RODGERS: The only thing I have of
21 information for you, you had requested a meeting
22 at the Breakers in Palm Beach. The Breakers no
23 longer takes purchase orders, so we can't place
24 a request there anymore.

25 The travel folks at Department of Health

1 have the meeting at the West Palm Beach
2 Marriott. It's a ten-minute drive from the
3 Breakers.

4 CHAIRMAN UNDERHILL: Okay.

5 MS. RODGERS: If anyone knows anything
6 adverse to staying there, just let me know. Or
7 if it's a wonderful place, let me know.

8 CHAIRMAN UNDERHILL: (Unintelligible.)

9 DR. MAULE: So will we be having the
10 meeting at the Breakers, but just staying at the
11 hotel?

12 MS. RODGERS: The Breakers won't take a
13 purchase order for anything, so everything is at
14 this West Palm Beach Marriott.

15 DR. KAPLAN: Can you just send us an email
16 on that?

17 MS. RODGERS: Yes.

18 DR. KAPLAN: Thank you.

19 CHAIRMAN UNDERHILL: I can hear Dr. Walker
20 now.

21 DR. MAULE: No. It just seems to me like

22 --

23 (Laughter.)

24 Because we have had Board meetings in the
25 past there, so --

1 DR. KING: Mr. Chairman, I know we approved
2 that date already, but given that it's not going
3 to be the same location of the FOA annual
4 meeting, is there any reason for having it on
5 that day in that city?

6 CHAIRMAN UNDERHILL: I just would think it
7 would be in close proximity to others that might
8 be attending the convention.

9 DR. NABERHAUS: Yeah. Just traditionally
10 it's been an opportunity for the members to
11 attend a meeting close by where the meeting's
12 going to be. That's mainly why it's been done
13 every year like that, but -- does the Florida
14 (Unintelligible) Association have any input with
15 the Breakers one way or another for the
16 Department?

17 AUDIENCE MEMBER: (Not using microphone.)

18 DR. MAULE: I would think though that it
19 would not be that difficult to get a room for a
20 meeting for that -- for that couple of hours in
21 conjunction with the convention, and then stay
22 offsite.

23 MS. RODGERS: The problem is they don't
24 take purchase orders --

25 CHAIRMAN UNDERHILL: If we could make

1 arrangements with FOA to use one of their rooms,
2 would that be in violation of any -- or conflict
3 or --

4 MS. RODGERS: I'm looking at Board counsel
5 on that.

6 MR. HARRIS: You all -- yeah. You could --
7 you could have a meeting anywhere you -- well,
8 not anywhere.

9 You can have a meeting anywhere you want to
10 as long as it is reasonably accessible to the
11 public. You can't have a meeting in a private
12 country club or a private home or something like
13 that, but any publicly accessible space.

14 So if somebody wants to volunteer you all
15 the use of a room, you could do that. Your
16 issue is, what happens if you get there and they
17 -- somebody -- the hotel, FOA, somebody decides
18 they need that room and say, "Oh, we need it
19 after all. We can't let you use it, sorry."
20 And now you've got a noticed meeting that you
21 can't have. When you all reserved the room and
22 pay for it, you own it. You have the ability to
23 control that.

24 But, no. I think you could use a room
25 anywhere you wanted to that's publicly

1 accessible. I mean, that's I think in the
2 Sunshine Law, actually.

3 DR. MAULE: Okay.

4 MS. BURNS-MCGRAIL: Hello, my name is
5 Denise Burns-McGrail. I'm actually on the
6 Convention Committee and we could guarantee you
7 a room for your meeting space.

8 CHAIRMAN UNDERHILL: Thank you. So even
9 though our sleeping rooms would be offsite --
10 (laughter).

11 DR. MAULE: It depends on the people that
12 are booking. Because I know in the past we
13 didn't have purchase orders for our rooms
14 either. We had to pay for the rooms and then we
15 were -- we are reimbursed.

16 MS. RODGERS: The Department has gone
17 through very significant changes in travel --

18 DR. MAULE: Uh-huh.

19 MS. RODGERS: -- recently. To the extent
20 that at one point, just a week ago, I was having
21 to duplicate everything we've done for travel
22 authorizations and reporting of costs onto
23 another form to get approved by the Surgeon
24 General. And then if you lived within 50 miles
25 of a meeting, there's another form that has to

1 go the Surgeon General.

2 So things have changed drastically just --

3 DR. MAULE: God bless you.

4 MS. RODGERS: -- within a week or two.

5 CHAIRMAN UNDERHILL: So why don't we have
6 Board staff and FOA sort of coordinate that and
7 --

8 MS. RODGERS: We will.

9 CHAIRMAN UNDERHILL: -- see if we can work
10 it out.

11 MS. RODGERS: We can do that.

12 CHAIRMAN UNDERHILL: All right. Anything
13 else to report?

14 MS. RODGERS: That's all.

15 CHAIRMAN UNDERHILL: So now we can move on
16 to Mr. Harris and the Board Counsel's report --
17 in a minute.

18 MR. HARRIS: Thank you. I'm sorry.

19 CHAIRMAN UNDERHILL: Side bar.

20 UNIDENTIFIED SPEAKER: Side bar.

21 MR. HARRIS: Yes. Thank you.

22 Members, we have an updated Rule report for
23 you on page 267 of your materials. I am pleased
24 to report that all of the rules that show up on
25 this form, except for two, have been adopted and

1 are effective as of November 5th.

2 So the changes to 4.001, 4.005, 4.006,
3 6.001, 15.005 and 15.006 are all adopted and
4 effective, and they were effective last week --
5 well, ten days ago. So we got all those moved
6 through.

7 The two that are outstanding are 3.007 and
8 4.009. And with your indulgence we can move
9 through those to an order.

10 With regards to the 3.007, you'll see
11 there's some information in your package.
12 Briefly, you will recall this was the -- Nova
13 University had made a request through their
14 general counsel to amend Rule 3.007 regarding
15 public service visual screenings. And their
16 concern was -- as I understood the concern, they
17 were concerned about triggering recordkeeping
18 requirements and HIPAA-type laws for these
19 public service visual screenings and wanted you
20 all to amend the rule.

21 We got some correspondence from the JAPC
22 attorney, Marjorie Holiday, back in June, which
23 I presented to you at the July meeting and you
24 all voted to instruct me to contact her and see
25 what I could do to -- to work things out, come

1 up with, you know, compromised language,
2 whatever we could do.

3 I probably spent about six hours on the
4 phone with Ms. Holiday and I am unhappy to
5 report that she will not budge on this. She
6 believes that the -- the Chapter 456, in
7 particular, and then your Practice Act 463,
8 basically imposed recordkeeping requirements on
9 -- on practitioners, and she does not agree that
10 you all, by rule, can do something that would
11 appear to alleviate recordkeeping requirements.

12 And so her position is, no, she's -- she
13 doesn't think you all can do it, and she told me
14 that, to the extent that you were unwilling to
15 withdraw this rule and voted to proceed with it,
16 she is extremely likely to take a recommendation
17 to her committee that the committee, the actual
18 members of the House and the Senate, meet to
19 formerly propose an objection to this.

20 And I don't know if that's an empty threat
21 or if she's really really serious about it, but
22 she told me to tell you that if you all aren't
23 willing to change this, she will strongly
24 consider going to the committee with an
25 objection.

1 I had advised you back in June that -- or
2 back in July that I agreed with her comments. I
3 think that the language that Nova sent to you
4 all is inartfully drafted. I think it's in the
5 wrong part of the rule. And I do believe that
6 it at least appears that you all are sort of
7 relieving practitioners of some statutory
8 recordkeeping requirements.

9 So I'm -- I --

10 CHAIRMAN UNDERHILL: I disagree with that
11 and we've -- we've beat this horse before.

12 There is a difference between a screening
13 and a comprehensive exam.

14 MR. HARRIS: Uh-huh. Absolutely.

15 CHAIRMAN UNDERHILL: And from Ms. Holiday's
16 point of view, she's treating this screening
17 like it is an exam, and it's not. It doesn't
18 even come close to approaching it.

19 And the whole idea of defining it in rule
20 was to make it clear that it was not an exam; it
21 does not reach a diagnosis. You cannot
22 prescribe from it. It's delineated into the
23 record.

24 And I -- I think the fundamental problem is
25 is that not understanding what a screening is,

1 and she wants us to define a screening. Well
2 you can't, because the person offering the
3 screening defines the screening.

4 She quotes from her latest letter that --
5 in reference to the glaucoma exam. Well, you
6 don't do a glaucoma exam in a screening. You
7 might screen for eye pressure or you might
8 screen for cupping, but that does not constitute
9 an exam.

10 DR. NABERHAUS: Or a diagnosis.

11 CHAIRMAN UNDERHILL: Or -- and you cannot
12 -- by rule, you cannot reach a diagnosis and you
13 cannot prescribe from it. And that's why that
14 you don't have to keep the written record
15 because it is not a comprehensive exam.

16 All you're doing is going out there and
17 screening, not examining. You are not reaching
18 a diagnosis. You are not prescribing from it.
19 As a matter of fact, you cannot prescribe from
20 it. And from that standpoint of view, you don't
21 have to keep any written record because it's not
22 an exam.

23 DR. KING: Mr. Chairman, then I would take
24 your argument and I would use that against
25 trying to change rule. If you're saying the

1 rule is so clear, why are trying to change it?

2 CHAIRMAN UNDERHILL: We didn't want to
3 change it, Nova did. We think it's perfectly
4 clear the way it was, but Nova had issues with
5 it -- or Nova's attorneys had issues with it and
6 they wanted it to be more defined, which got us
7 into this mess to start with.

8 MR. HARRIS: Darned attorneys.

9 CHAIRMAN UNDERHILL: I didn't say that.

10 DR. NABERHAUS: Mr. Harris, can you clarify
11 is -- is she saying basically the entire rule is
12 -- we have to remove, or just the new language?
13 Because it seems like we are now at a point of
14 no return on the entire thing. Or am I not
15 reading that properly?

16 MR. HARRIS: She's -- that is a nuance
17 question; it's a good one.

18 Her specific immediate concern is this
19 language. I think it has sort of raised some
20 issues with her about the 3.007 Rule in general,
21 but those would not -- I don't believe that --
22 were this language not there, I don't think it
23 would rise to the level where she would be
24 sending me some letters demanding we open the
25 rule to fix her concern.

1 She might send me a letter saying, "I've
2 reviewed this rule and I've got some concerns
3 with it. You might want to think about fixing
4 this on your own schedule."

5 But I don't think we would have a problem
6 with the rule as it currently reads were it not
7 for the Nova's suggested additional language.

8 DR. NABERHAUS: So I'm not sure it's worth
9 continuing this fight.

10 (CROSSTALK.)

11 CHAIRMAN UNDERHILL: The only thing
12 (unintelligible) is that the attorneys at Nova
13 will not let their students screen them. That's
14 just what the net effect is.

15 DR. NABERHAUS: And I think that's a shame
16 because it's a public service and I think that's
17 -- Mrs. Holiday needs to understand that, that
18 you're impeding on a public service.

19 MR. HARRIS: I explained that to her and I
20 explained the consequences which is, you know --
21 my understanding is that Nova spends a lot of
22 time and effort with these students going out to
23 underserved members of the public in communities
24 that may not have access really good eye care.
25 And that if they stopped doing this, it's going

1 to have a net effect -- a negative net effect.

2 Her response -- not that she thinks you
3 guys are doing the wrong thing. She definitely
4 understands why you want to do it. Her position
5 is simply she doesn't think the statute lets
6 you. And she thinks you all want to do the
7 right thing for the right reasons, but this is a
8 situation where she thinks the statute doesn't
9 let you do what Nova wants you all to do for
10 them. And so -- and her suggestion, of course,
11 is if the Board or the Association or Nova is
12 concerned about this, they can go to the
13 legislature and try to get something changed.

14 And, again, she's looking at it from a very
15 very narrow perspective. That's her job. We've
16 talked about this before. She's a very good
17 attorney. She spends a lot of time and effort
18 thinking about things, but her job is very
19 narrow. She's not concerned with right or wrong
20 or what should happen; she's concerned with what
21 is my scope of authority under Section 120.545,
22 Florida Statutes. That's what she reviews for.
23 It's almost like a checklist.

24 CHAIRMAN UNDERHILL: If we were to pursue
25 this and it goes in front of the legislative

1 committee, who offers testimony there? Is it
2 something that we have been put on, or is it
3 something that just Ms. Holloway [sic] would go
4 to the Committee and present her argument and we
5 were -- we would not be --

6 MR. HARRIS: No, no, no. You will be
7 summoned. Somebody will be summoned. And that
8 is also -- well, that's a little bit of a pickle
9 and I'm not sure if I am strongly one hundred
10 percent behind it, telling you guys you
11 absolutely can do this, and we get an objection,
12 it's my job to go and represent you in front of
13 the Committee and I get beat up for it.

14 In this case, you know, my advice to you is
15 that I'm not sure that this is something you all
16 ought to do. Given that, I'm not sure whether
17 our contract with the Department of Health
18 allows me to appear on your behalf. I just
19 don't know.

20 UNIDENTIFIED SPEAKER: Yeah.

21 MR. HARRIS: And that's something that
22 would have to be looked at by basically my
23 Bureau Chief to see if the contract allows me to
24 appear on your behalf.

25 If it does, presumably you would vote to

1 send me. If it doesn't, then one of you all
2 would have to show up in front of the Committee.

3 And again, we don't know what the Committee
4 would do. Because if you think about it,
5 Ms. Holiday is doing her job. The statute told
6 her what to do and that's what she's doing.

7 If she wants to go in front of the
8 Committee, you've got six representatives and
9 six senators who are elected representatives who
10 are going to be looking at this to decide -- you
11 know, their specific job on the Committee is are
12 you exceeding your rulemaking authority? Are
13 you contravening, modifying or enlarging a
14 statute?

15 But at the same time they are public
16 servants who presumably have some level of
17 concern for their constituents and they don't
18 have to take their attorney's advice. Just like
19 you don't have to take my advice.

20 The problem is, it's a very brutal process.
21 I have never been in front -- Diane, have you
22 ever been in front of JAPC?

23 MS. GUILLEMETTE: No.

24 MR. PRESNELL: I've the privilege one time.

25 MR. HARRIS: Yeah. You've been there.

1 MR. PRESNELL: I've been there one time.

2 MR. HARRIS: And it's fairly brutal, I
3 understand.

4 MR. PRESNELL: It's extremely brutal. I
5 was bloodied pretty good. But, yeah, it is not
6 an easy process.

7 The question, though, is can you talk with
8 those members before you appear?

9 MR. HARRIS: I do not know.

10 MR. PRESNELL: And that's the question I
11 don't know either. I do -- I believe that the
12 opponent of mine during that rule process had
13 that opportunity to talk. I don't know if
14 that's the case now.

15 MR. HARRIS: Uh-huh.

16 MR. PRESNELL: But if indeed that is the
17 case, then of course you -- that's a big
18 advantage for you to do so.

19 The second thing is I know this has taken a
20 lot of work and I appreciate your effort in
21 this. This -- this does take a lot of time and
22 a lot of work.

23 DR. NABERHAUS: Yeah. It's a -- it's a
24 fight that I'm a little concerned about because
25 what she is kind of leaning towards is if -- if

1 we do this where we go this direction and we are
2 -- we say, "Yes, you can do this," are we
3 opening up the door for practitioners to have
4 other exclusions for not keeping records?

5 You know, and I think that's a big issue
6 here and I don't know where we want to go with
7 this. And, you know, maybe we'll ask FOA.

8 Do you all have any input on this? I mean,
9 I know we want to try to, you know, do this for
10 the general public when it is for Nova, but
11 there comes a time when maybe it makes sense to
12 just back up and say, "Hey," you know, "Nova, we
13 think what you're doing is fine. I don't think
14 you have to have these concerns," and just leave
15 it at that and leave the rule alone.

16 Because we're -- we're going down a path we
17 may not want to go down.

18 CHAIRMAN UNDERHILL: Mr. Griffin?

19 MR. GRIFFIN: Well I think the Board
20 recognizes this came from Nova. We did not --
21 we did not object to it.

22 I did have discussions with Dean Loshin
23 ahead of time and told him what my views were.

24 Clearly it's the Board's decision on where
25 it wants to go.

1 Let me offer one comment, though. I have
2 been in front of the JAPC. I've been in front
3 of the JAPC on behalf of this Board years ago in
4 a different life, and I won.

5 So it is not the bloodletting necessarily
6 that it has been described by some. I think it
7 is -- and in saying that, I'm not suggesting
8 that you need to take it. I don't
9 (unintelligible) have a dog in this fight.

10 But -- and I understand the concerns you're
11 raising about pursing and undermining the
12 existing rule -- I would suggest this. Let me
13 go back and talk to Dean Loshin and show him
14 what the concerns are. And I know the rule has
15 been tolled. I don't know how much longer you
16 have with it.

17 MR. HARRIS: Marjorie told me she was
18 willing to hold off until this meeting, but
19 she's going to basically untoll it next week.

20 So it's -- something's going to happen next
21 week. You -- you know, so --

22 MR. GRIFFIN: Let me go back and talk to
23 Dean Loshin. I don't represent Nova. I don't
24 represent Dean Loshin, but he -- I did talk to
25 him before they made the request. And let me

1 share with him what's going on and perhaps he'll
2 decide that they have a different view of it
3 right now.

4 CHAIRMAN UNDERHILL: Could you perhaps talk
5 to Ms. Holloway [sic] and say, you know, "We
6 just need another...," how much time would you
7 need, John? Another week or two?

8 MR. GRIFFIN: I can certainly communicate
9 with Mr. Harris right after my conversation with
10 Dean Loshin and -- and let that go.

11 MR. HARRIS: And I could certainly call
12 Ms. Holiday and let know what you are all doing
13 and give -- as long as I can give her a
14 timeframe that we're going to do something,
15 she'll be fine. But the problem is once you all
16 are done meeting today, it's three months until
17 another Board meeting.

18 So, you know, and I don't know -- no matter
19 what would happen with Nova, what they decided
20 they wanted to do, you all are the one who have
21 proposed rule language, and you all are the ones
22 who have to decide what to do with it.

23 One opportunity might be, and this would
24 start the ball over, but we could easily
25 essentially untoll this rule, withdraw it, and

1 then turn around and redevelop it, which would
2 start the clock -- start a new clock ticking.
3 So that would buy us time somehow. If that's
4 something you were interested in doing.

5 I think what's going to happen is when I
6 call her next week, she's going to say, "What
7 did the Board vote to do," and I'll tell them
8 whatever your vote it. If it's to proceed with
9 this rule, she's -- she claims -- and again, I
10 don't know. She claims she'll -- she'll try to
11 take it to the Committee.

12 At the same time, if you all vote to
13 withdraw it, it would be -- this iteration would
14 be dead, but that doesn't mean you can't turn
15 around and repropose something.

16 You will recall I thought that the language
17 is in the wrong place and I still do. Where
18 Nova suggested you add it to (6) is incorrect;
19 it should be part of (6)(c).

20 So at a minimum, the language, in my mind
21 -- my advice to you all was and remains that
22 it's in the wrong place and needs to be moved.
23 And I also think it could be cleaned up a little
24 bit.

25 I thought it was somewhat cumbersome as

1 phrased. But again --

2 DR. KING: Earlier you commented that you
3 spent six hours with her and you didn't see that
4 there was any leeway. Are you saying that you
5 do think that given more time and maybe some
6 give on either side there may be some language
7 that would be acceptable to either both sides?

8 MR. HARRIS: No. I don't think there is
9 any language that she will accept that
10 accomplishes the goal that Nova -- and again, we
11 haven't heard from Nova. That's part of my
12 frustration in this process.

13 They've had opportunities to come to you
14 and present their position. All you have is
15 that sketchy letter that was in the original
16 materials from six months ago. Nova has not --
17 and I'm frustrated by this; you hear it in my
18 voice.

19 Nova has not seen fit to come and advocate
20 on their own behalf to cooperate with you all
21 and trying to resolve these problems.

22 I don't think there's any leeway with JAPC.
23 But what I do think is if you all want to go
24 forward, at a minimum there's a way you could
25 clean it up to make it a little less -- right

1 now it's just flat wrong because it's in the
2 wrong place.

3 If you fix that, you're still going to have
4 the substantive problem which -- again, I'm
5 recommended to you all that you should withdraw
6 it. But if you all don't want to do that, you
7 want to go forward, at a minimum you could move
8 the language which would get you something that
9 in my mind at least -- you'd still have the
10 substantive problem of the exception, but at
11 least it wouldn't clearly be in the wrong place.

12 DR. KING: Well I think what makes the most
13 sense is, you know, we see what the results of
14 the conversation with Mr. Griffin and Dean
15 Loshin. But I'd be in favor of withdrawing the
16 rule and I would like to see Nova come and make
17 a better case.

18 I mean, for us to try to do their bidding,
19 right now with given with what you've told us,
20 unless something miraculous happens with this
21 conversation, I don't see that there's really
22 any good in us proceeding with the rule as it
23 exists.

24 DR. MAULE: I would have to agree. It
25 seems to me like the issue is with Nova and

1 their counsel, and maybe their counsel needs to
2 understand what is and isn't allowed so they
3 could advice Nova in a better way.

4 MR. PRESNELL: I have a question. What if
5 Nova does continue with what they want to do?
6 Who then is going to file a complaint? Where is
7 that complaint going to come from? And if a
8 complaint is filed, what happens to the
9 complaint; does it come before this Board?

10 DR. KING: I think what they were concerned
11 about was HIPAA violations. There's a big scare
12 on that if you were audited, you know, for HIPAA
13 violation if they could be liable for big fines.

14 MR. HARRIS: But, you know, that is
15 something this Board has no jurisdiction over.
16 You can't do anything about HIPAA.

17 MR. GRIFFIN: It's my understanding they're
18 -- they're not being allowed to do it right now.
19 So they're not -- you're not -- they wouldn't be
20 ceasing anything that's been undertaken.

21 It's a desire to offer the screening
22 services going forward. Their -- their attorney
23 has told them you're not allowed to do it unless
24 they get clarification from the Board as to
25 whether the screening would establish any type

1 of HIPAA relationship and any recordkeeping
2 requirements.

3 So they had been sitting on the sideline,
4 my understanding is, waiting to be -- waiting
5 for a rule change that would permit it.

6 So I don't foresee, because nothing is
7 taking place, I don't foresee there would be
8 complaints because I don't believe the
9 activity's going to take place unless Nova is
10 told that there's no recordkeeping, no HIPAA
11 implications; no doctor-patient relationship
12 created as a result of the screening. Absent
13 that being --

14 MR. PRESNELL: I'm not sure that the Board
15 has to be doing anything at all.

16 MS. GUILLEMETTE: Mr. Chair, may I address?
17 I'm Diane Guillemette. I'm going to be
18 your new counsel.

19 CHAIRMAN UNDERHILL: You're recognized.

20 MS. GUILLEMETTE: Thank you.

21 I don't think the Board has any authority
22 to interpret HIPAA rules. And if HIPAA is what
23 Nova is concerned about, the need to address
24 that on their own.

25 One thing -- I don't know if it's been

1 suggested or whatever, it could be that Nova
2 could do a declaratory statement.

3 From what I'm hearing, the Board seems to
4 be saying that the screenings is not -- does not
5 trigger a recordkeeping event. And if there was
6 some clarification as to that for a dec
7 statement -- and I don't know if that's correct
8 or not. But if -- if Nova was to do a
9 declaratory statement as to whether a screening
10 would trigger a recordkeeping event, then they
11 would have something in the record as to --
12 whether they needed to report that or not.

13 And that might be a way to get Nova what
14 they want without having this rule. And I am
15 with Mr. Harris. One of the things about a rule
16 objection, if JAPC were to go ahead and do an
17 objection to this rule, it's basically a red
18 flag for a lawsuit. And there's people that
19 like troll for objections so that they can do it
20 because there's attorneys' fees awarded in these
21 cases.

22 So I believe that Mr. Harris has said in so
23 many words that there's a substantive problem
24 with the language that's in here now that would
25 make it very subject to litigation, and it would

1 be a problem.

2 CHAIRMAN UNDERHILL: Well I don't think
3 Nova can ask for a declaratory statement.

4 MR. HARRIS: They could.

5 CHAIRMAN UNDERHILL: Nova themselves?

6 MR. HARRIS: Yes.

7 MS. GUILLEMETTE: Uh-huh.

8 CHAIRMAN UNDERHILL: They're not a -- then
9 they meet the qualification.

10 MR. HARRIS: So Nova would come in and they
11 would say, "We are a substantially affected
12 person by this rule. We have an interest in
13 offering these -- I think they would be
14 substantially affected.

15 We have -- we are in the business of
16 offering public service visual screenings.

17 We are concerned about the application of
18 Rule 3.007 to our public service visual
19 screenings. We want the Board to say that these
20 public service visual screenings do not trigger
21 the recordkeeping requirements, and then they
22 would list, you know, 456 or 463, whichever --
23 you can't really interpret 456, but you could at
24 least interpret your Practice Act 463, and you
25 could issue a binding statement that says we do

1 not believe that under these circumstances, as
2 laid out by Nova, this constitutes -- this is --
3 that this is a problem.

4 Because realistically, remember, when I've
5 advised you in the past on dec statements, you
6 all are the ones who determine are they
7 substantially affected. And if you decide that
8 they are, who's going to challenge that? I
9 mean, somebody could come in and intervene in
10 opposition, somebody other than JAPC could come
11 in and intervene in opposition, but who's going
12 to do that? Because realistically people want
13 to see this question answered.

14 You all can answer it any way you want and
15 JAPC doesn't have any say in how you interpret
16 your Practice Act 463 and your rules. You can
17 interpret them any way you want to. Her concern
18 is do you have rulemaking authority, not the
19 interpretation of those rules.

20 So Ms. Guillemette has a wonderful --
21 potentially. I don't know what Nova would want
22 to do, but that could be a solution where you
23 issue a statement binding on you that you do not
24 believe public service visual screenings
25 constitute an examination that triggers these

1 recordkeeping rules in your Practice Act and
2 your statutes, and that would be binding on you.

3 And so, therefore, if a complaint from a
4 consumer came in, one of these members of the
5 public who said, "I was screened and I have a
6 problem with this," you all would have a
7 statement that prohibits investigations or --
8 you know, the Department would not be able to
9 proceed because the defense immediately would
10 be, "We have a declaratory statement binding on
11 the Board saying this is not a problem, and
12 therefore Nova's protected."

13 That doesn't solve the HIPAA issue, but you
14 all have no authority over that. There's
15 nothing you can do on HIPAA anyways. And I
16 don't think this rule change would affect HIPAA
17 because the Feds would say, "We don't care what
18 your rule says."

19 MR. PRESNELL: (Not using microphone.)

20 THE REPORTER: Your microphone's not on.

21 MR. PRESNELL: Microphone?

22 Can I make a motion to withdrawal -- to
23 withdrawal this rule?

24 CHAIRMAN UNDERHILL: You may.

25 DR. KAPLAN: Second.

1 DR. MAULE: Yeah, second.

2 CHAIRMAN UNDERHILL: And then you have a
3 second, Dr. Kaplan.

4 All right. Discussion, Board?

5 DR. MAULE: I think that's an excellent
6 solution.

7 CHAIRMAN UNDERHILL: The idea then would be
8 to withdraw to stop the train from leaving the
9 station.

10 MR. HARRIS: Right.

11 CHAIRMAN UNDERHILL: To go back to Nova and
12 have a discussion with Nova to see if they want
13 to come -- come back with a declaratory
14 statement.

15 MR. HARRIS: And -- yes.

16 CHAIRMAN UNDERHILL: Request for a
17 declaratory statement.

18 MR. HARRIS: Or to appear in front of you
19 to ask for the rulemaking again and then you can
20 argue it.

21 And my -- of course you all know that I'm
22 willing to talk to anyone. I can't speak for
23 Ms. Guillemette, but if anyone from Nova would
24 like to call me to talk about this, I'm more
25 than willing to talk to them also, and let them

1 know what my understanding of the concerns are
2 to inform them.

3 DR. KAPLAN: And how long are you going to
4 be with us, or is this really --

5 MR. HARRIS: Another X-number of minutes.

6 DR. KAPLAN: Okay.

7 MR. HARRIS: Ms. Guillemette and I are,
8 what, two offices apart?

9 MS. GUILLEMETTE: Three.

10 DR. KAPLAN: Okay.

11 MR. HARRIS: Maybe three. So clearly we
12 will discuss it, and if Nova calls me I'll get
13 with her. If they call her, she'll presumably
14 want to loop me in because I have this history.

15 So just because I won't be technically your
16 Board counsel, I'll still be advising to the
17 extent that there are any questions that I can
18 answer.

19 DR. KAPLAN: Great. Thank you.

20 CHAIRMAN UNDERHILL: I just have one last
21 question and I'm not really sure why this
22 particular rule was in the wrong place.

23 What was the --

24 MR. HARRIS: Yeah. So what happened was --
25 and the -- when you look at 3.007, and we're

1 talking about Subsection --

2 UNIDENTIFIED SPEAKER: Excuse me. I
3 thought it was under (c), but I guess it wasn't,
4 huh?

5 MR. HARRIS: 3.007, and it is Subsection
6 (5). I'm sorry. Is it (5)?

7 UNIDENTIFIED SPEAKER: Subsection (6)(c) --

8 MR. HARRIS: Subsection (6).

9 UNIDENTIFIED SPEAKER: (6).

10 MR. HARRIS: "The minimum procedure set
11 forth in Subsection (2) above shall not be
12 required in the following circumstances. (1)
13 When a licensed practitioner or certified
14 optometrist is providing specific optometric
15 services on a secondary or tertiary basis. (2)
16 When a licensed practitioner is providing
17 consultative optometric services. (3) or (c)
18 When a licensed practitioner or certified
19 optometrist performs public service visual
20 screenings."

21 UNIDENTIFIED SPEAKER: Right.

22 MR. HARRIS: So the problem is the language
23 that Nova wants should be in that (6)(c), that
24 Subsection (c), or actually it would be
25 Paragraph (c). The problem is they wanted it in

1 Subsection (6).

2 So they added the language to Subsection
3 (6). "The minimum procedures set forth shall
4 not be required in the following circumstances."
5 Then they talk about the public service visual
6 screenings.

7 That doesn't apply to the secondary or
8 tertiary basis or the limited basis, the request
9 of a health care practitioner.

10 CHAIRMAN UNDERHILL: So it should have been
11 (6) (c).

12 MR. HARRIS: So it should have been (6) (c),
13 yeah. And the fact that it wasn't is an
14 additional --

15 UNIDENTIFIED SPEAKER: Error.

16 MR. HARRIS: Yeah. That's a technical kind
17 of an error that would -- you know,
18 substantively it doesn't make much of a
19 difference, but technically it does and that
20 would be something the committee could easily
21 say, "Yeah, you clearly got this in the wrong
22 place." No.

23 CHAIRMAN UNDERHILL: And Ms. Holiday
24 wouldn't make any difference t her?

25 MR. HARRIS: Well it wouldn't make her any

1 difference on the substance, but it would at
2 least remove one of the three legs of her stool
3 for the objection. Which would be, if you put
4 it in the right place, it would be hard for her
5 to say, you know, it's -- it's per se invalid
6 because it's in the wrong place. You still have
7 the substantive problem.

8 CHAIRMAN UNDERHILL: It wouldn't make her
9 happy.

10 MR. HARRIS: It would not make her happy.

11 And again, I mean, I respect Ms. Holiday.
12 She respects you all. You know, I do want to
13 make it clear. I don't think she's saying that
14 you all aren't trying to do the right thing for
15 the right reason.

16 She gets what you want to do and I hammered
17 that point for her for a long time. And her
18 bottom-line position is, "I'm being paid by the
19 legislature to do a job, and that is to review
20 for, you know, this sort of specific checklist
21 of things, and I believe you can't do for the
22 right reasons."

23 You know, you can't do what you want to do
24 and go to the legislature and get them to say
25 you can do it.

1 And so I -- I don't think this is personal
2 with her. I think it's just she's doing her job
3 and believes her marching orders are clear.

4 DR. MAULE: Do we need to vote on the
5 motion then?

6 CHAIRMAN UNDERHILL: I'm sorry?

7 DR. MAULE: Do we need to vote?

8 UNIDENTIFIED SPEAKER: We already motioned.

9 UNIDENTIFIED SPEAKER: Yeah, we have a
10 motion and a second.

11 CHAIRMAN UNDERHILL: We motioned and we
12 seconded. We were in discussion.

13 Do you any further discussion? (No
14 response.)

15 All right. All in favor say aye. (Board
16 members responded.)

17 Opposed? (No response.)

18 So now -- now the ball's in Nova's court
19 and then they can come back and request a
20 declaratory statement and maybe we can skin the
21 cat that way.

22 MR. HARRIS: From my perspective I think
23 that would get them -- that would get you all to
24 where you want to be which is clearly
25 interpreting what you think this is and

1 providing a binding opinion.

2 And again, substantially affected means
3 whatever you all want it to mean. If you
4 decided they're substantially affected you would
5 vote to -- to issue the declaratory statement.

6 And honestly, I have a hard time believing
7 somebody would intervene in opposition. I mean,
8 I guess maybe the ophthalmologists' Bruce May
9 might try to show up, but I don't know what dog
10 they have in the hunt.

11 So, no, I wouldn't think so.

12 CHAIRMAN UNDERHILL: Thank you.

13 MR. HARRIS: The next rule you all have is
14 the 4.009, and this is with regard to dispensing
15 practitioners.

16 And you'll recall that we -- staff had come
17 to you all, again, I think it was two meetings
18 ago with the form, the application form, for --
19 you'll becoming licensed in Florida as a
20 certified optometrist, and had suggested that
21 you all might to add the option for an applicant
22 to request to be a dispensing practitioner at
23 the time of application.

24 And you all were rightly concerned about
25 that, that these new graduates would not know

1 what they were getting to. We checked the box.
2 We get licensed as a dispensing practitioner and
3 then we get into all sorts of trouble with the
4 rules.

5 So you thought that rather than allowing it
6 to be done at the time of application it should
7 still be a separate application.

8 But you were also worried that people don't
9 really know these laws and rules and dispensing
10 practitioners, especially because they're not in
11 your Practice Act; they're in the Pharmacy
12 Practice act.

13 And so you all voted to proposed
14 modification of 4.009 to include a fairly -- you
15 know, a pretty comprehensive warning as to the
16 requirements if one becomes a dispensing
17 practitioner.

18 And we proposed that language and
19 Ms. Holiday is objecting to that also, and for
20 the same reasons basically.

21 The biggest issue she has, and this is one
22 of her statutory mandates in 120.545, is rules
23 should interpret statutes. They should not
24 paraphrase or repeat them.

25 And her -- her concern is two pronged.

1 Number one, you're essentially repeating the
2 statutory prohibitions in the rule. But number
3 two, it's not your Practice Act. It's the
4 Pharmacy Practice Act.

5 So to the extent you're trying to include
6 language from Chapter 465 in an optometry rule,
7 she doesn't believe you all have authority under
8 the law to "interpret" 465 in your 64B13 rule.

9 So she accordingly objected. And looking
10 through it, and having talked to her, I think
11 she's essentially correct, which is you're
12 essentially paraphrasing the statute and the --
13 and her statute, 125.45, says, "Review rules to
14 make sure they're not paraphrasing statutes."
15 And if they are, they ought not to be doing it.

16 So my recommendation. Again, you tried to
17 do the right thing and Marjorie is saying no,
18 and so my recommendation would be to withdraw
19 these changes, and hopefully dispensing
20 practitioners who take a laws and rules exam
21 will understand the laws and rules on dispensing
22 practitioners.

23 You might could direct staff to put a tab
24 on your optometry website that maybe contains
25 the links to the Pharmacy Practice Act for

1 dispensing practitioners. Maybe the FOA would
2 want to put some information out to, you know,
3 the practitioners, you know, through the
4 newsletter saying, by the way guys, you know, if
5 you want to be a dispensing practitioner,
6 remember 465 is fairly prescriptive and there's
7 some pretty severe penalties for violations.

8 But I think I agree with her. You all --
9 we can answer these questions, but the answer
10 would have to be essentially something to the
11 effect of, yeah, we know the statute says that,
12 but we're not sure optometrists really read the
13 Pharmacy Practice Act, and so we want it to be
14 in our rule, and we think it's important for the
15 edification.

16 That would be the best we could do. I
17 don't know how -- I don't know what she would do
18 about that, you know, honestly.

19 Would she want to take an objection to the
20 Committee on that? I have no idea. I don't
21 know if she cares that strongly.

22 This is a fairly strongly worded letter,
23 but under than that this is not one where she
24 told me that she would definitely take an
25 objection to the committee.

1 At the same time, we'd have a tough time
2 explaining to the Committee why we were trying
3 to paraphrase the Pharmacy Practice Act.

4 DR. NABERHAUS: Well we're still out of
5 reference, the statute of the other -- of the
6 Pharmacy, correct?

7 MR. HARRIS: Yes.

8 DR. NABERHAUS: So we still reference those
9 for people to go look up --

10 MR. HARRIS: Correct.

11 DR. NABERHAUS: -- in the rule.

12 And did I hear you correctly, is 465
13 Pharmacy, or is that just general health care
14 law?

15 MR. HARRIS: 465 is the Pharmacy Practice
16 Act.

17 DR. NABERHAUS: It is? Okay.

18 MR. HARRIS: And which is what's weird, but
19 dispensing practitioners --

20 DR. NABERHAUS: Okay.

21 MR. HARRIS: Yeah. And so it's weird the
22 dispensing practitioners are enumerated in the
23 Pharmacy Practice Act.

24 DR. NABERHAUS: Yeah.

25 MR. HARRIS: And it applies to, you know,

1 medical doctors and osteopaths, and -- so it's
2 odd that all those professions would be stuck
3 into the Pharmacy Practice Act.

4 CHAIRMAN UNDERHILL: Mr. Presnell, did you
5 do that?

6 MR. PRESNELL: I did. It was not on at
7 all.

8 (Laughter.)

9 CHAIRMAN UNDERHILL: When you wrote the
10 Practice Act?

11 MR. PRESNELL: I was -- yeah. That was one
12 of the things that -- that I was extremely
13 involved with, yeah.

14 DR. KING: Well, Mr. Chairman, I'd like to
15 move that we withdraw the rule.

16 DR. NABERHAUS: I'll second.

17 CHAIRMAN UNDERHILL: Motion by Dr. King,
18 seconded by Dr. Naberhaus.

19 Any further discussion?

20 DR. KAPLAN: With the discussion I would --
21 I would take our attorney's recommendation and
22 ask our Board staff to put it on the website,
23 some information, really like a plug. It's very
24 important.

25 DR. NABERHAUS: Also, too, for the

1 discussion, I'd like to add to the record I this
2 is why it's very important when we approve
3 jurisprudence lecturers, to have some -- you
4 know, some background in the Board and what's
5 going on with the Florida laws.

6 Because, as I see some of these folks that
7 are coming up to be approved, there's no way
8 they're going to know how important some of
9 these things are unless they're actively
10 involved, or have been actively involved in this
11 process.

12 So I think that, just for discussion, I
13 think it's important as we go forward on trying
14 to determine who can and cannot lecture for
15 jurisprudence.

16 MR. HARRIS: You're speaking big picture
17 right now, correct?

18 DR. NABERHAUS: Correct.

19 MR. HARRIS: Policy.

20 DR. NABERHAUS: Correct.

21 CHAIRMAN UNDERHILL: We were just trying to
22 keep our brethren out of trouble, but evidently
23 that --

24 MR. HARRIS: No good deed goes unpunished.
25 And this is -- you all have tried to do two very

1 good deeds.

2 DR. KAPLAN: And I'd like to make a
3 comment. You're coming in under some big shoes.
4 He's really really done a lot and helped us a
5 lot, and he's really very proactive in trying to
6 keep us out of trouble as well, and we
7 appreciate it.

8 MS. GUILLEMETTE: Thank you. I'll do my
9 best, but I do realize that you had very good
10 counsel.

11 MR. HARRIS: Do I have buy you lunch now?

12 (Laughter.)

13 DR. KAPLAN: So we need to vote on the
14 motion, I think.

15 CHAIRMAN UNDERHILL: I think I did that,
16 didn't I?

17 DR. KAPLAN: No, we haven't voted yet.

18 CHAIRMAN UNDERHILL: Any further
19 discussion? (No response.)

20 Hearing none, all in favor say aye. (Board
21 members responded.)

22 Opposed? No response.

23 Thank you. Thank you, Mr. Harris. Do you
24 have anything else?

25 MR. HARRIS: Nope, that's all I got.

1 THE REPORTER: Excuse me.

2 CHAIRMAN UNDERHILL: Anything from our
3 future counsel --

4 UNIDENTIFIED SPEAKER: I'm sorry?

5 THE REPORTER: I need a break for a minute.

6 CHAIRMAN UNDERHILL: -- other than --

7 UNIDENTIFIED SPEAKER: Can we take a break?

8 MR. HARRIS: Yeah.

9 UNIDENTIFIED SPEAKER: Mr. Chairman, can we
10 take a break?

11 CHAIRMAN UNDERHILL: You need a break?
12 Well let's -- we'll finish with --

13 MS. GUILLEMETTE: I'm just very happy to be
14 here and working with you all. I look forward
15 to it. I'm available any time.

16 You went into my history. I have done
17 board work before. I just -- my legal history.
18 I was a prosecutor right out of law school in
19 Gainesville. I was hired by them after doing an
20 internship with them.

21 I did work in private practice for five
22 years; did basically family law issues including
23 child support and divorces, that kind of thing.
24 And I also did a little bit of criminal defense
25 there.

1 Then I came to the Attorney General's
2 Office and I've done quite a few things for
3 them.

4 I did a little dependency work and I --
5 that was very difficult for me. I didn't like
6 learning about all the facts and that was --
7 it's admirable work, but I just could stand the
8 nightmares.

9 So then I started working in tort and I
10 transferred to administrative law. I was in
11 administrative law for like ten years.

12 Recently I was promoted to be the Division
13 Chief of the Ethics Division within the Attorney
14 General's Office. I enjoyed that for five
15 years. I found it very stressful and I really
16 enjoyed doing board work. So I would like to
17 come back and -- Ed Tellechea, the Division
18 Chief of Administrative Law, welcomed me back
19 and here I am. And I look forward to working
20 with you all.

21 And like I said, I do have ten years'
22 experience with boards and I hope that I will
23 serve you all well and look forward to it.

24 Thank you.

25 CHAIRMAN UNDERHILL: Well we certainly

1 appreciate you coming and we certainly
2 appreciate all that you guys do.

3 And when you need those glasses adjusted
4 that are on your head, just let us know.

5 (Laughter.)

6 Sorry. All right. So we've had a request
7 for a break.

8 Any objections? (No response.)

9 All right. We will go in recess till,
10 what, ten minutes? Five, ten minutes. Okay.

11 Thank you.

12 (A break was had.)

13 CHAIRMAN UNDERHILL: We'll call the meeting
14 back in session.

15 And where were we?

16 MS. ROGERS: We were on Committee Reports.

17 CHAIRMAN UNDERHILL: Committee Reports.

18 Budget. Mr. Presnell. We've got money.

19 Life is good.

20 MR. PRESNELL: We've got money. We're
21 good.

22 (Laughter.)

23 CHAIRMAN UNDERHILL: All right. Dr. Maule,
24 Continuing Education.

25 DR. MAULE: Yes. So the first thing on

1 your agenda is there was a course that submitted
2 for jurisprudence and I just wanted you guys'
3 feedback on it.

4 It starts on page 270 in your book. And
5 you'll see the outline, I believe, on 276.

6 My opinion was that this particular
7 provider did not have -- I guess you would --
8 well, according to the rule you have to
9 demonstrate competence in Florida law pertaining
10 to optometric practice as evidence by the
11 individual or organization's education,
12 credentials and experience.

13 So my feeling and my thought was that this
14 particular provider did not exhibit that and I
15 wanted your feedback.

16 CHAIRMAN UNDERHILL: You want to make a
17 motion to decline and have a discussion?

18 DR. MAULE: I would like to make a motion
19 that we -- that I am not able to approve this
20 course.

21 CHAIRMAN UNDERHILL: Is there a second?

22 DR. NABERHAUS: Second.

23 CHAIRMAN UNDERHILL: Seconded by
24 Dr. Naberhaus.

25 Any discussion?

1 MR. HARRIS: And the basis for that denial
2 is that the applicant has not demonstrated
3 compliance with the rule, correct?

4 DR. MAULE: Correct.

5 MR. HARRIS: Thank you.

6 DR. MAULE: That I don't see any evidence
7 of competence in Florida law as evidenced by his
8 credentials, education or experience.

9 CHAIRMAN UNDERHILL: Any further
10 discussion? (No response.)

11 All in favor say aye. (Board members
12 responded.)

13 Opposed? (No response.)

14 DR. MAULE: So going forward then, will you
15 notify CE Broker or I need to do that? Because
16 it's like on my pending list. I won't be able
17 to do it.

18 MS. RODGERS: The Board staff notifies CE
19 Broker.

20 DR. MAULE: Perfect. Okay. Thank you.

21 And then the next thing is we need to
22 ratify the courses that have been approved since
23 we last met.

24 So on 281 and going forward, I would
25 entertain a motion that we ratify the courses

1 that have been approved.

2 DR. KAPLAN: I'll second it.

3 CHAIRMAN UNDERHILL: A motion by Dr. Maule,

4 seconded by Dr. Kaplan, was it?

5 Discussion? (No response.)

6 All in favor say aye. (Board members

7 responded.)

8 Opposed? (No response.)

9 Very good.

10 DR. MAULE: I have just one quick question

11 and I think that the -- the biennium ends in

12 February 28th, 2015, and this is the year,

13 correct, that there is no more grace period?

14 That everything has to be in to CE Broker by the

15 28th; is that correct?

16 MS. RODGERS: I believe your renewal

17 mandatory reporting begins with March 1st, 2015.

18 DR. MAULE: Oh, okay.

19 MS. RODGERS: Not --

20 DR. MAULE: So we're still okay.

21 DR. KAPLAN: That's this biennium.

22 MS. RODGERS: Yes.

23 DR. KAPLAN: Correct.

24 DR. MAULE: But the biennium going forward,

25 though. So I guess my question is, if there is

1 -- if there are courses -- someone came to me
2 and asked if there are course given in February,
3 do they have to all be upload to CE Broker by
4 February 28th in order to count for this current
5 biennium, or it's the clock starts March 1st for
6 the next biennium.

7 MS. RODGERS: The clock starts March 1st,
8 2015 --

9 DR. MAULE: Okay.

10 MS. RODGERS: -- for your mandatory
11 reporting. Whatever's taken in February 2015,
12 if it's going to complete the current biennium
13 of --

14 DR. MAULE: Uh-huh.

15 MS. RODGERS: -- 2013 to 2015, it's not
16 mandatory to be reported.

17 DR. MAULE: Gotcha. Okay.

18 MS. RODGERS: It's recommended, but --

19 DR. MAULE: Because there was some -- I
20 think some confusion and I think it came from
21 the -- the RBD meeting, that if things weren't
22 in by the 28th, then we weren't allowed to renew
23 our licenses this time, but I think it's the
24 next biennium, you're right.

25 DR. KAPLAN: Right. As of right now you

1 can still manually upload for this coming
2 biennium.

3 DR. MAULE: Uh-huh.

4 DR. KAPLAN: But after that, it's -- that's
5 it.

6 There's still a grace period for optometry.
7 Some of the other professions there is -- they
8 already passed their grace period.

9 MS. RODGERS: Right.

10 CHAIRMAN UNDERHILL: Okay. I'm confused.
11 It's not hard to do.

12 When I renew in March --

13 DR. KAPLAN: February.

14 CHAIRMAN UNDERHILL: -- February.

15 When I renew online they are going to be
16 looking at my CE for the previous --

17 MS. RODGERS: Correct. Yes.

18 DR. KAPLAN: Correct. For this two-year
19 period right now is what they look at.

20 So if you go to CE Broker right now, you
21 punch in your number. It'll say you're done or
22 whatever, and that's what they look at.

23 But you still have the ability this year,
24 this coming renewal to upload it manually.
25 After this timeframe you can't do it anymore.

1 So there's a two-year -- this was --
2 there's a two-year grace period. That's it.

3 CHAIRMAN UNDERHILL: But I thought there
4 was a way that people who took CEs --

5 DR. MAULE: No. That's the
6 self-submission.

7 CHAIRMAN UNDERHILL: -- they can --

8 DR. MAULE: That's not what I --

9 DR. KAPLAN: That's different.

10 DR. MAULE: Yeah. And that self-submission
11 would have to be uploaded before the end of the
12 biennium as well.

13 So the question basically is there's a
14 seminar being given at the beginning of February
15 and it's going to involve TQ, and TQ -- you
16 know, you get the test mailed three weeks later
17 and then you have two weeks to mail it in and
18 whatever, so those scores would not be available
19 until March 10th, for example.

20 So, you know, in past years you could
21 upload any time as long as you took the class
22 within the biennium. But from my understanding
23 a couple of years ago when we were discussing
24 this whole new CE Broker audit thing, we would
25 not be able to renew our licenses unless CE

1 Broker said we were clear within that biennium.
2 That starts next biennium.

3 So I guess my question would be for this
4 person that's asking me that, if we don't upload
5 the TQ until -- or they don't upload their TQ
6 until March 10th, will it count? Will they be
7 able to renew on March 1st? You see?

8 CHAIRMAN UNDERHILL: Right.

9 DR. NABERHAUS: Well let me ask this. When
10 does CE Broker receive the information from the
11 provider of the CE? Because that's going to be
12 the date that's going to be in the CE Broker?

13 DR. MAULE: Well, and that's --

14 DR. NABERHAUS: Will that be after they
15 pass the test or when they take the class?

16 DR. MAULE: After they pass the test.

17 DR. NABERHAUS: Are you sure?

18 DR. KING: Well you don't know if you get
19 the TQ unless you pass the test.

20 DR. MAULE: The provider could upload it.

21 (CROSSTALK.)

22 DR. NABERHAUS: Well, yeah. You can get
23 the hours, but not the TQ credit though.

24 DR. MAULE: Right. And if you don't have
25 your six TQ then you cannot renew.

1 So that's -- the question is how that works
2 timing wise.

3 CHAIRMAN UNDERHILL: And that might be an
4 issue with C-CO (ph) because they're in
5 February, aren't they?

6 DR. KING: Well next biennium. This year
7 we're still okay.

8 CHAIRMAN UNDERHILL: She was talking going
9 forward.

10 DR. KING: Right.

11 CHAIRMAN UNDERHILL: So if you went to C-CO
12 going forward --

13 DR. KING: Right.

14 CHAIRMAN UNDERHILL: -- if they didn't
15 report that before you had to renew your
16 license, you technically could not be able to
17 renew your license.

18 DR. KING: Uh-huh.

19 MS. RODGERS: And I think it's going to be
20 more of a problem in your next biennium, 15 to
21 17.

22 DR. KING: Right.

23 DR. MAULE: Uh-huh.

24 MS. RODGERS: More so than it is now. Now
25 it's not mandatory report -- it's not a

1 mandatory reporting period.

2 So if you, in all honesty say, "I took this
3 course. I'm passing the test," there's not
4 going to be someone that's going to question
5 you. Ms. Jones isn't going to try and prosecute
6 someone if they didn't pass the test.

7 But it will be a problem if you wait till
8 February 2017.

9 DR. MAULE: Okay. That's -- so we do have
10 that two years.

11 MS. RODGERS: Yes.

12 DR. MAULE: Okay.

13 DR. NABERHAUS: So basically at that point
14 you have to make sure that you're done by that
15 date because there's no way to fix the computer
16 --

17 MS. RODGERS: Yes.

18 DR. NABERHAUS: -- so it's -- it's a cutoff
19 as of the end of February.

20 MS. RODGERS: Yes.

21 DR. MAULE: Like midnight.

22 DR. NABERHAUS: And if you -- if you pass
23 the test in March --

24 MS. RODGERS: No, you can't renew.

25 DR. NABERHAUS: -- it's not going to count

1 for that biennium, period.

2 MS. RODGERS: That's correct.

3 DR. MAULE: Well you would have even taken
4 the test because you took the class.

5 DR. NABERHAUS: We just need to tell
6 everybody that. It doesn't matter.

7 DR. KING: That brings up an interesting
8 question. If you got credit for the attendance
9 in one biennium, do you get the TQ in the next
10 biennium?

11 (Laughter.)

12 DR. MAULE: Right? Yeah.

13 Well -- and that's the whole thing, is
14 those providers are going to need to know that
15 they need to upload that day. You know, not
16 wait until the end.

17 DR. NABERHAUS: Well let me ask a separate
18 question. I haven't really gone through the
19 process.

20 You don't have to be a member of CE Broker.
21 You can look at your things, number one, right?

22 DR. MAULE: Yes.

23 DR. NABERHAUS: Number two --

24 DR. KAPLAN: You are automatically a
25 member.

1 DR. NABERHAUS: -- if there is -- if there
2 is a conflict, we can obviously self report this
3 point, but it costs you, what, \$25 per course?

4 DR. KAPLAN: Per hour. Per course or hour.
5 Is it per hour?

6 MS. RODGERS: And that part I don't know.

7 DR. KAPLAN: Something to that effect.

8 DR. NABERHAUS: So if you -- if the
9 provider didn't report, there was some kind of
10 mixup and you have to report it, it costs you
11 money.

12 UNIDENTIFIED SPEAKER: Correct.

13 DR. KAPLAN: And those are people that are
14 taking it out of state.

15 DR. NABERHAUS: Well it could be in state;
16 it doesn't matter.

17 DR. KAPLAN: Right. Well, if they screw up
18 in state then that's --

19 DR. NABERHAUS: Like if your local society
20 --

21 DR. KAPLAN: Yeah.

22 DR. NABERHAUS: -- doesn't do the right
23 thing or doesn't get it reported, and you want
24 to self report it, it's going to cost you.

25 DR. KAPLAN: Right. And it's going to cost

1 you money. Correct.

2 DR. NABERHAUS: If you're a member of CE
3 Brokers, does it still cost you money to do
4 that?

5 DR. KAPLAN: Correct.

6 MS. RODGERS: Yes.

7 DR. NABERHAUS: So it doesn't matter if
8 you're a member or not --

9 DR. KAPLAN: Right.

10 (CROSSTALK.)

11 DR. NABERHAUS: -- it's going to cost you
12 to self report.

13 DR. KAPLAN: There's a paid member and
14 non-paid member. The non-paid member --
15 everybody's a member. But then there's the paid
16 member, which give you a little bit more access.

17 You're automatically a member of CE Broker
18 is you're Florida licensed.

19 DR. NABERHAUS: But it -- it still costs
20 you to self report.

21 DR. KAPLAN: Correct.

22 DR. NABERHAUS: And then in 2017, you can't
23 self report.

24 DR. KAPLAN: Correct.

25 DR. NABERHAUS: So that -- that provider or

1 CE, you must have it or you have to go back to
2 them to get them to report it --

3 MS. RODGERS: Yes.

4 DR. NABERHAUS: -- or you cannot -- you
5 cannot get a license. It'll basically put you
6 down as no license as of March 2017.

7 MS. RODGERS: Well it will put you down as
8 delinquent, which means you can't practice until
9 you --

10 DR. NABERHAUS: You don't have a license.
11 You have a certain amount of time, otherwise you
12 lose your license based on the statute, right?

13 MS. RODGERS: Right.

14 DR. NABERHAUS: I mean, then you're
15 starting all over.

16 MS. RODGERS: Yes.

17 DR. NABERHAUS: So it's a pretty serious
18 issue for the -- for the members around the
19 state when this actually comes.

20 Good luck. It's going to be a nightmare.

21 DR. KAPLAN: Everybody got their cards in
22 the mail for the computer system? Yeah.

23 CHAIRMAN UNDERHILL: For what?

24 DR. MAULE: Yeah.

25 DR. KAPLAN: For the renewal. You should

1 have already gotten your renewal notice in the
2 mail.

3 DR. MAULE: That is a -- that is another
4 comment.

5 When we received them it has my name and
6 access number and my password --

7 DR. KAPLAN: And it's a postcard.

8 DR. MAULE: -- on a postcard.

9 DR. KAPLAN: Yeah.

10 DR. MAULE: Why did you not protect that in
11 some way? Like, what's to stop someone else
12 from grabbing my post card and hacking into my
13 license?

14 DR. NABERHAUS: And changing you name or
15 address or anything with all the information.

16 DR. MAULE: Yeah.

17 DR. NABERHAUS: Are you all aware of that?

18 MS. RODGERS: I was not.

19 DR. MAULE: Yeah.

20 DR. NABERHAUS: For everybody to see when
21 it comes. I'm looking at it and I said, geez, I
22 hope nobody changes my name.

23 DR. MAULE: Uh-huh.

24 CHAIRMAN UNDERHILL: I don't know what
25 you're talking about.

1 DR. NABERHAUS: It's a card.

2 DR. KAPLAN: It's a post card.

3 DR. NABERHAUS: It's a DOH -- it's telling
4 you to renew and it's got your pass -- your user
5 name and password to go to your account to do
6 that. Everybody they mailed was.

7 CHAIRMAN UNDERHILL: Okay.

8 DR. NABERHAUS: I just --

9 DR. KING: On my post card you had to tear
10 it open to see it. It wasn't just a one --

11 DR. NABERHAUS: It's still right there.

12 MS. RODGERS: And that's what I thought
13 they were. You're saying they're just the plain
14 one sided --

15 DR. KING: No, they're bi-fold.

16 MS. RODGERS: Okay.

17 DR. KING: So it wasn't -- you had to tear
18 the post card open.

19 MS. RODGERS: Okay.

20 DR. KING: But it still --

21 (CROSSTALK.)

22 DR. MAULE: Mine was not sealed. Mine was
23 -- yeah.

24 DR. NABERHAUS: It's not sealed.

25 DR. MAULE: It was not sealed.

1 MS. RODGERS: Let's hope no one opened
2 yours.

3 DR. NABERHAUS: The only good news is it's
4 hard to navigate so nobody will do it.

5 (Laughter.)

6 DR. MAULE: All right. That's all.

7 CHAIRMAN UNDERHILL: All right. What else
8 you have? Is that you? Done?

9 DR. MAULE: That's all from CE.

10 CHAIRMAN UNDERHILL: I see where 2017 can
11 be an issue with C-CO.

12 DR. MAULE: Uh-huh.

13 DR. KING: C-CO is not going to be very
14 happy.

15 CHAIRMAN UNDERHILL: Huh-huh.

16 MS. RODGERS: And I -- the other Ms. Rogers
17 has some information about January 15th, 2015.

18 MS. ROGERS: Before January 15th.

19 Hi, I'm Eddie Rogers, Board Staff.

20 Keri Meany, who's over our Continuing
21 Education portion, she's indicated to me that
22 there's some courses, TQ course, I guess, for
23 optometry that, I guess, weren't approved or
24 something along those lines, and they did not --
25 they opted to not waive the 90-day requirement.

1 So instead of me, when I found this out
2 last week, emailing everybody to request a
3 conference call, I figured we could just bring
4 it up here and maybe decide here, at sometime
5 between now and January 15th, if we could set up
6 a good time for a conference call that
7 everybody's available, and that way these eight
8 or nine TQ courses could be reviewed before
9 then. And so --

10 CHAIRMAN UNDERHILL: That should go to the
11 chair, the Education Chair, correct?

12 MS. ROGERS: I think they did, is what
13 Keri's telling me. Keri had told me -- right.

14 So you're familiar with what she's
15 referring to.

16 DR. MAULE: Yeah.

17 MS. ROGERS: So it's like eight or nine TQ
18 courses. And so because they opted to not waive
19 their 90 days, I could not put them on the
20 agenda for -- it's too late. It was too late to
21 be put on this agenda, but they opted to not
22 waive their 90 days, so they can't go on the
23 next already-schedule Board meeting agenda.

24 So we have to have a conference call before
25 January 15th, which is the 90-day deadline.

1 DR. KAPLAN: And what is this? Explain
2 what it is. It's to approve the courses?

3 MS. ROGERS: It's to, I guess --

4 DR. KAPLAN: That were already given --

5 MS. ROGERS: Yeah.

6 DR. MAULE: So I guess we really can't
7 discuss the whole situation now, but the courses
8 were not submitted as TQ. They were submitted
9 as general hours and approved as such.

10 DR. KAPLAN: Okay.

11 DR. MAULE: And so we are going to have to
12 go through their whole process to discuss that,
13 and they don't want to wait until the next
14 meeting because it's right before the biennium
15 ends.

16 MS. ROGERS: Right.

17 DR. MAULE: They need an answer prior to
18 that.

19 MR. HARRIS: You know, we've had this
20 discussion unfortunately way more times than you
21 all would like. But, you know, the rule says
22 they must be submitted prior to being offered.

23 DR. MAULE: Uh-huh.

24 MR. HARRIS: So those people are going to
25 have file Petitions for Variance of Waivers to

1 even get it in front of you.

2 Yeah. So, you know, for you all even to be
3 able to consider this at your conference call,
4 which we know the Chairman supports strenuously,
5 he loves conference calls, in order to even
6 consider it they're going to have to file
7 petitions for variance or waiver of the rule,
8 and then you all would have the authority to
9 consider that variance and waiver and whether to
10 grant it or not.

11 They're going to have to demonstrate to
12 you. I think you only granted one -- maybe one
13 variance or waiver in the year or two years.

14 DR. MAULE: And that was because of -- it
15 was --

16 (CROSSTALK.)

17 MR. HARRIS: (Unintelligible.)

18 DR. MAULE: It was submitted and -- all the
19 information was submitted. It was just a --

20 CHAIRMAN UNDERHILL: It was --

21 MR. HARRIS: Right.

22 DR. MAULE: -- but all the information was
23 submitted on time.

24 MR. HARRIS: And so I don't know -- we
25 don't want to talk about any facts or

1 circumstances because we're not before, but, you
2 know, they're going to need to file variance or
3 waivers and you'll have to go through the
4 process on each of those.

5 And the 90 days she's referring to, you
6 remember, the Administrative Procedure Act says
7 you have 90 days -- you, the Board, have 90 days
8 to act on a completed application. And for
9 purposes of the Administrative Procedures Act,
10 the best course is to believe that these CE
11 courses count as licensing basically.

12 You're approving something and so,
13 therefore, the 90-day clock applies. If you
14 don't do anything, it's deemed automatically
15 approved.

16 So you got to take some action within the
17 90 days, either to approve or deny. Because
18 people can waive that. And if -- if the person
19 had been willing to waive that 90 days, they
20 could wait until the next regularly-scheduled --

21 DR. MAULE: Right.

22 MR. HARRIS: -- board meeting.

23 The -- apparently people say, "No, we don't
24 want to waive our 90 days. We want you to act
25 on it within the statutory 90-day clock."

1 DR. MAULE: Sooner. Right, yeah.

2 So have they actually applied for the
3 waiver then or -- so we can go ahead and
4 schedule the call?

5 MS. ROGERS: To be honest with you, I'm not
6 certain. Keri's the one who's working on that.

7 Do you --

8 MS. RODGERS: Dr. Maule, was this before
9 you -- before the courses were given? That was
10 my understanding.

11 DR. MAULE: The courses were already
12 approved as general hours.

13 MS. RODGERS: Oh, they just wanted to
14 change the type of hours. But they haven't yet
15 given the course.

16 DR. MAULE: No. The courses are already
17 done and gone.

18 MS. RODGERS: Ah, okay.

19 Then, no, they have not submitted petitions
20 yet, but we will speak with the provider --

21 DR. MAULE: So if you can get that and --

22 MS. RODGERS: -- and let them know their
23 options.

24 DR. MAULE: -- then -- yeah.

25 Can we go ahead and schedule a call anyway

1 as long as we're all here --

2 MS. RODGERS: Certainly.

3 DR. MAULE: -- and figure out a good time,
4 or we have to wait until we have that in hand in
5 order to schedule the call?

6 MS. RODGERS: If you schedule the
7 teleconference far enough out, that will give
8 the provider time to get their petition together
9 and submitted, filed, reviewed.

10 MR. HARRIS: Remember, they have to submit
11 it and it has to be published in the Florida
12 Administrative -- Notice of a Variance and
13 Waiver has to published for at least 14 days in
14 the Florida Administrative Register.

15 So they have to file their petitions,
16 become legally sufficient, get published, and
17 then 14 days has to run from that.

18 So you're going to want to schedule the
19 meeting fairly far out from now --

20 DR. MAULE: Uh-huh.

21 MR. HARRIS: -- to make sure that all that
22 stuff --

23 CHAIRMAN UNDERHILL: Well why don't we wait
24 to schedule the meeting until after they've
25 actually filed.

1 We can see if they're going to do that or
2 not.

3 (CROSSTALK.)

4 DR. NABERHAUS: Can you clarify the 90-day
5 clock? We have to work within their 90-day
6 clock, but they -- they can file their petition
7 late and we're over the 90-day clock. It just
8 doesn't make sense.

9 I mean, they have to file the petition.
10 When does their 90-day clock start?

11 MR. HARRIS: Well, so the deal is you all
12 have 90 days to act on the -- on a request for
13 -- request for approval. You have 90 days from
14 the time that request is deemed complete to when
15 you must act.

16 If you don't act within those 90 days, it's
17 deemed approved.

18 DR. NABERHAUS: What is there required to
19 act? Just the Chairman say no?

20 MR. HARRIS: Well, it has to be a Board
21 decision.

22 So -- but you all can deny it. And so the
23 burden is always on the applicant.

24 So if these people don't submit a Petition
25 for Variance or Waiver in time, or it's not a

1 legally sufficient Petition for Variance or
2 Waiver, you all will meet and you would
3 presumably vote to deny their application.

4 DR. NABERHAUS: So we can do a conference
5 call and vote to deny no matter what.

6 MR. HARRIS: Yeah.

7 DR. NABERHAUS: It's up to them to then do
8 a waiver?

9 MR. HARRIS: Well, they would want to do
10 the waiver first in order to give you the legal
11 ability.

12 But, yeah, you can theoretically have a
13 conference call eight days from now, you know --

14 DR. NABERHAUS: And we'd meet the clock.

15 MR. HARRIS: -- and you'd meet the clock,
16 yeah.

17 So theoretically you could schedule -- well
18 I shouldn't say eight days from now because it
19 has to be noted. The agenda has to be available
20 for seven days in advance and it has to be
21 noticed. But theoretically, you would meet two
22 weeks from now.

23 DR. NABERHAUS: And then they could do the
24 waiver after that; is that correct?

25 MR. HARRIS: No.

1 UNIDENTIFIED SPEAKER: No.

2 MR. HARRIS: They have to do it in advance.
3 But the point is, if they didn't ask for a
4 waiver, it's not your job to tell them what they
5 have to do.

6 DR. NABERHAUS: Yeah. That's my point.
7 Why worry about that? Let's just do what we've
8 got to do.

9 MR. HARRIS: We want to give you the
10 ability to grant it, if that's your -- you know,
11 you might see something in this -- in these
12 applications that you really think --

13 DR. NABERHAUS: Okay.

14 MR. HARRIS: -- justifies a waiver and
15 might want to grant it. So we want -- as a
16 general rule, we try to be helpful to people,
17 and so we want to let them know, "By the way, if
18 you want this to be approved, you better ask for
19 a Petition for Variance or Waiver or the Board
20 cannot grant it," and then it's up to them
21 whether they want to actually file the variance
22 or waiver or not.

23 If they don't, then they're out of luck.

24 DR. MAULE: It's my understanding that they
25 just want an answer one way or other, and they

1 had really hoped that they could get on this
2 agenda, but I guess they didn't file the --

3 CHAIRMAN UNDERHILL: We can't even take it
4 up without the --

5 DR. MAULE: Exactly. So -- so you'll let
6 them know the --

7 DR. KAPLAN: So there's no 90 day right
8 now? Okay.

9 CHAIRMAN UNDERHILL: The clock starts to
10 run when they file the petition, correct?

11 DR. KAPLAN: When the petition's filed.

12 CHAIRMAN UNDERHILL: No? When?

13 DR. KAPLAN: When is the 90 days?

14 (CROSSTALK.)

15 MR. HARRIS: From the date the
16 "application" is complete. So from whenever --
17 whenever they asked for approval of these
18 courses --

19 DR. KAPLAN: Okay.

20 MR. HARRIS: -- as transcript quality, that
21 would start the clock.

22 DR. MAULE: Oh, okay. Well they have --

23 MS. ROGERS: Action needs to be taken prior
24 to January 15th. January 15th is the 90-day
25 deadline.

1 So we have to -- you guys have to meet and
2 may give Board action to approve, deny,
3 whatever, before January 15th.

4 MS. RODGERS: Based on their current
5 request.

6 DR. MAULE: Right. Because they -- they
7 requested it in October.

8 MS. RODGERS: Yes. Then if they
9 subsequently file the petition, that's a
10 different sets of days.

11 DR. MAULE: Okay. So now we don't need the
12 petitions then? We do --

13 MS. RODGERS: Well, Ms. -- they need the
14 petition, that's correct, Dr. Naberhaus.

15 DR. KING: So they made a request without a
16 petition, so we -- we could act on their
17 request.

18 MS. RODGERS: Yes.

19 MR. HARRIS: Yes.

20 DR. KING: And just say, "No, we deny," or
21 if we approve, but then they could always come
22 back and do a petition.

23 MS. RODGERS: Yes.

24 DR. KING: But we can't do it -- we can't
25 do that today.

1 DR. KAPLAN: So we can wait till the 14th
2 of January and have a meeting and vote no, or
3 yes --

4 MS. RODGERS: Yes.

5 DR. KAPLAN: -- and then after that, then
6 they can do their thing or whatever, or they
7 could do it before --

8 DR. KING: Or they could do a petition
9 after.

10 DR. KAPLAN: Okay.

11 DR. KING: Yeah.

12 DR. NABERHAUS: But in the interest of the
13 folks who don't have the hours, we really need
14 to try to do --

15 DR. KING: Do it sooner.

16 DR. NABERHAUS: -- it as soon as you can --

17 DR. MAULE: Right.

18 DR. NABERHAUS: -- so that if it does get
19 denied, they have the ability to scramble and
20 catch up.

21 DR. KING: Right.

22 DR. MAULE: Uh-huh. So my recommendation
23 would be let's go ahead and schedule the call
24 then because the clock is already ticking from
25 when they originally requested --

1 DR. KING: They got to January 15th.

2 CHAIRMAN UNDERHILL: I've really got in a
3 bind here, a little bit, in terms of the --
4 what's going on. Have they actually --

5 MR. HARRIS: Yes? I'm sorry.

6 CHAIRMAN UNDERHILL: -- asked for anything?

7 MR. HARRIS: Yes.

8 DR. MAULE: Yes.

9 MR. HARRIS: They have formerly asked the
10 Board to approve these courses for transcript
11 quality.

12 CHAIRMAN UNDERHILL: And we can't do
13 anything with that until they file a petition?

14 MR. HARRIS: No. You could act on that
15 whenever it's properly noticed. By the time
16 they ask you for it, it was too late to be able
17 to put those materials together and get them out
18 to you.

19 Because, you remember, there's a seven-day
20 notice.

21 CHAIRMAN UNDERHILL: So it's been noticed,
22 correct?

23 MR. HARRIS: It has not been noticed yet.
24 It's been received by the Board office, but
25 there wasn't time to properly notice that so you

1 could consider it at this meeting.

2 CHAIRMAN UNDERHILL: Correct.

3 MR. HARRIS: And because that clock is
4 ticking, you have until January 15th to act.

5 CHAIRMAN UNDERHILL: Okay.

6 MR. HARRIS: Does that make -- does that
7 clarify?

8 CHAIRMAN UNDERHILL: Kind of.

9 MR. HARRIS: So they basically got it too
10 late to get onto this agenda, but there's -- but
11 early enough that you can't wait until your next
12 Board meeting in order to act on it.

13 So they're sort of in that sort of grey
14 area between -- it's a pretty good strategy.

15 CHAIRMAN UNDERHILL: So in other words,
16 they made a request to the CE Chair to approve
17 this for TQ?

18 DR. MAULE: Right.

19 MR. HARRIS: Correct. And she has
20 recommended it go to the full Board for review.

21 DR. MAULE: No. I recommended denial based
22 on the rules, so.

23 MR. HARRIS: And only the Board can deny.
24 You cannot delegate your authority to a Board
25 member to deny something. You can delegate to

1 review and to approve, but if it's a denial it
2 has to come to the full Board for action because
3 only the Board can deny something.

4 Well technically only the Board can approve
5 it, too, but nobody's going to protest if it's
6 approved.

7 CHAIRMAN UNDERHILL: And we just approved
8 it, right? Didn't we just approved the previous
9 ones, not this --

10 MR. HARRIS: Correct. Well you -- you
11 ratified the --

12 CHAIRMAN UNDERHILL: The list of approvals
13 --

14 MR. HARRIS: Right.

15 CHAIRMAN UNDERHILL: -- that she had
16 approved.

17 MR. HARRIS: Correct.

18 DR. MAULE: Right.

19 MR. HARRIS: Right.

20 CHAIRMAN UNDERHILL: So now we're in a
21 situation where they've asked for it to be added
22 as TQ, and --

23 MR. HARRIS: She's recommending denial.

24 CHAIRMAN UNDERHILL: -- she's recommending
25 denial and we have 90 days from the time they

1 ask --

2 MR. HARRIS: Uh-huh.

3 CHAIRMAN UNDERHILL: -- to deal with that.

4 MR. HARRIS: Correct.

5 CHAIRMAN UNDERHILL: So that puts us into
6 before January 15th --

7 DR. MAULE: Uh-huh.

8 MR. HARRIS: Yes, sir.

9 CHAIRMAN UNDERHILL: -- correct?

10 MR. HARRIS: Yes, sir.

11 CHAIRMAN UNDERHILL: So we can wait to get
12 through the holidays before we do anything.

13 MR. HARRIS: Yes, sir. You could do it on
14 January 14th.

15 CHAIRMAN UNDERHILL: I don't want to wait
16 that late, but I don't want to wait all the way
17 to --

18 DR. NABERHAUS: Just remember, anybody --
19 if they -- if it does get denied, that's going
20 to shorten their window to catch up.

21 MR. HARRIS: So for the --

22 DR. NABERHAUS: So the longer we wait to
23 make a decision the more you put that
24 practitioner at risk for not meeting his
25 deadline by the February 28th.

1 DR. MAULE: It'll be a 20-minute conference
2 call.

3 CHAIRMAN UNDERHILL: 20 minutes? That
4 long?

5 DR. KING: The other thing --

6 DR. KAPLAN: The minimum timeframe right
7 now is two-weeks basically to do a conference
8 call because it has to be -- you have to do your
9 --

10 CHAIRMAN UNDERHILL: You've got to be two
11 weeks --

12 DR. KAPLAN: -- or whoever's doing the --
13 okay.

14 MR. HARRIS: Right.

15 DR. KING: And how long does it take to get
16 the -- if they request a waiver, what's the
17 timeframe, the notice and all that? So what
18 would be the earliest we could schedule?

19 MR. HARRIS: Well what would happen in my
20 mind, the way you all would want to move
21 forward, is we would -- and you don't have to
22 pick it today, but you would pick the date you
23 want to have the conference call.

24 The staff would notify these people -- I'll
25 call them the applicant.

1 The staff would notify the applicant, "Hey,
2 the Board is going to consider your request for
3 approval of these courses as transcript quality
4 on this date by telephone conference call. By
5 the way, the rule says it has to be approved
6 prior to the course being offered. If you want
7 the Board to be -- to have the legal ability to
8 grant your request, you need to file a Petition
9 for a Variance or Waiver. It's your choice.
10 But if you don't file it, the Board won't have
11 the legal authority to grant your request."

12 And then it'll say, "If you want to file
13 one of these, by the way, it has to be noticed
14 in the Florida Administrative Register, and that
15 requires 14-days' notice. So you need to have
16 it filed by -- and then we would just count
17 backwards."

18 And so -- and presumably Adrienne is
19 listening, and I see her typing. She's
20 basically, "Email Larry and tell him to write
21 this letter," is presumably what she's typing
22 this very second.

23 (Laughter.)

24 But that's something I do generally for you
25 guys. Whenever there's these questions, I will

1 send a letter and spell all this stuff out, and
2 say, you know, "As counsel to the Board, here's
3 what y'all need." You know, "I can't tell you
4 what to do. I can't give you legal advice. If
5 you want the Board to be able to act, here's
6 what needs to happen." You know, "Govern
7 yourself accordingly."

8 CHAIRMAN UNDERHILL: So today's the 14th.
9 The earliest we could do it would be the 28th.
10 Two weeks.

11 MR. HARRIS: Well, theoretic -- yeah.

12 CHAIRMAN UNDERHILL: That'd be the
13 earliest.

14 UNIDENTIFIED SPEAKER: Well, that's
15 Thanksgiving.

16 MR. HARRIS: But, no.

17 DR. KAPLAN: That's the day after.

18 MR. HARRIS: Because we'd have to have the
19 petition today in order to do it 14 -- it would
20 have to be noticed, and you'd have to add at
21 least a couple of days.

22 DR. MAULE: Yeah.

23 MR. HARRIS: So, yes, it'd be the 29th or
24 the 30th.

25 DR. MAULE: So say the first week of

1 December, sometime the first week of December,
2 and just get it over with.

3 MR. HARRIS: That's pretty tight.

4 DR. MAULE: The second week of December.
5 The third week of December.

6 MR. HARRIS: What about the first week of
7 January.

8 DR. MAULE: That's the problem. Is then
9 all these other doctors who thought they had the
10 courses in hand --

11 MR. HARRIS: Well how about the second week
12 of December?

13 DR. MAULE: Don't have time to get the
14 courses --

15 MR. HARRIS: December 7th, 8th, 9th,
16 something like that?

17 DR. KAPLAN: The 8th is Monday.

18 MR. HARRIS: Yeah. I mean, I don't know --
19 I know you guys have -- have -- I know nobody
20 likes the conference calls. But in the past,
21 you all have scheduled them right around lunch
22 time, you know --

23 DR. MAULE: Uh-huh.

24 MR. HARRIS: -- for 15 minutes or half an
25 hour. 12:30. So you could pick Monday the 8th

1 for a half an hour.

2 CHAIRMAN UNDERHILL: No. We won't do that.
3 But we could do Tuesday, the 9th, or Wednesday
4 the 10th.

5 MR. HARRIS: Okay.

6 CHAIRMAN UNDERHILL: Thursday the 11th.

7 DR. KING: I can't do Thursday.

8 MR. HARRIS: Wednesday the 9th,
9 tentatively?

10 UNIDENTIFIED SPEAKER: 10th.

11 DR. MAULE: I cannot do Wednesday, the
12 10th. I have another call --

13 DR. KAPLAN: How about Tuesday, the 9th?

14 DR. MAULE: Tuesday, the 9th.

15 CHAIRMAN UNDERHILL: All right. So we'll
16 -- we'll set a conference call for Tuesday, the
17 9th. A one-item agenda.

18 DR. NABERHAUS: It should be pretty quick.
19 I mean, we've been down this road a million
20 times.

21 (CROSSTALK.)

22 CHAIRMAN UNDERHILL: (Unintelligible) the
23 Department or the Board doesn't throw anything
24 else on this agenda.

25 DR. NABERHAUS: Unless there is really

1 special, I don't think it's going to be a big
2 issue.

3 MS. RODGERS: I'll try.

4 DR. NABERHAUS: Mr. Chairman, might I
5 suggest some hearing aids.

6 (Laughter.)

7 CHAIRMAN UNDERHILL: Okay. So we'll set it
8 for the 9th.

9 MS. RODGERS: At 12:30.

10 CHAIRMAN UNDERHILL: 12:30.

11 Does that work for everybody? I mean, I
12 picked 12:30 because --

13 UNIDENTIFIED SPEAKER: Yeah.

14 CHAIRMAN UNDERHILL: -- that seems to be a
15 reasonable time to do it and you don't have to
16 clear the morning schedule -- almost. Okay.

17 So, look what you've done.

18 MS. ROGERS: I'm sorry. Blame Keri.

19 CHAIRMAN UNDERHILL: And then we can move
20 on to Complaints, Investigation and Enforcement.

21 Dr. Kaplan, anything to bring to the Board?

22 DR. KAPLAN: Nothing. Nothing, sir.

23 CHAIRMAN UNDERHILL: And Disciplinary
24 Compliance, Ms. McNaughton is excused, so we
25 have no report there.

1 But we do have --

2 DR. NABERHAUS: PRN letter, yeah.

3 CHAIRMAN UNDERHILL: -- the completion of
4 the PRN contract by Machiela. How do you say
5 that name?

6 DR. NABERHAUS: Machiela.

7 CHAIRMAN UNDERHILL: Machiela.

8 Dr. Machiela.

9 And on 332 it -- received notification that
10 that doctor has completed their requirements
11 that the Board placed on them.

12 DR. NABERHAUS: Mr. Chairman?

13 CHAIRMAN UNDERHILL: Is there any action
14 that the Board needs to take on that?

15 MS. RODGERS: No, sir. It's just --

16 MR. HARRIS: No.

17 CHAIRMAN UNDERHILL: It's just done.

18 MS. RODGERS: -- for your information.

19 DR. NABERHAUS: Well can I ask a question,
20 counsel, on this? The Final Order -- and I'm
21 not sure how this Final Order applies to this
22 particular thing, but the Final Order said that
23 the Respondent shall appear before the Board of
24 Optometry rather than the Probation Committee.

25 As far as I know, this -- this gentleman

1 has never, during his course of probation, ever
2 appeared before us. It's always been these very
3 curt letters from PRN that are very concerning.

4 This is a case that was very serious. It
5 was one that gave a lot of consternation and we
6 -- I personally have always been worried about
7 this case.

8 You know, I'm not exactly sure when it goes
9 to PRN what we're allowed to do and see, and not
10 do. But this is -- this was a very serious
11 issue at the time. And what -- I'm not sure if
12 this is appropriate at this stage or not.

13 MR. HARRIS: What I'm hearing you say is
14 you're asking your staff to look at the minutes
15 of the meetings to see if he, in fact, ever
16 personally appeared before the actual Board.
17 And if he did not, I think you would be advising
18 your staff to file a complaint with CSU for
19 violation of a Final Order.

20 Because if he was specifically ordered to
21 appear in front of the full Board, and he did
22 not do that, then he is in violation of a Final
23 Order. It doesn't matter, this PRN stuff. He's
24 in violation.

25 MR. PRESNELL: Do we remember if this

1 person just went on their own to PRN, or was it
2 -- it was an administrative --

3 DR. NABERHAUS: We directed the agreement,
4 I think.

5 MR. HARRIS: It was part of the settlement
6 agreement, I think.

7 MR. PRESNELL: Okay. It was a settlement
8 agreement.

9 MS. RODGERS: That's correct.

10 DR. NABERHAUS: Yes, we directed it and I
11 think there was a report -- I'm not -- I can't
12 remember because it's been so long. And there
13 was some concerns with the monitoring of this
14 individual during his probation period in that
15 somehow somehow the monitor was an employee of
16 his, rather than an outside monitor.

17 So I know we've had discussions about this
18 case before. I think you were there, Rod.

19 This is the one where --

20 MR. PRESNELL: I do --

21 DR. NABERHAUS: -- one of the few times
22 when the State's Attorney Office actually
23 ordered a cease and desist and this person was
24 actually taken out of that office, and it was an
25 emergency order type of thing.

1 And this was -- it was pretty serious in
2 terms of what happened here, and it just seems
3 like we as a Board -- I know myself, being on
4 the Board, we have had very little information
5 on this case going forward. And so I'm a little
6 uncomfortable just saying, "Hey, great. Just
7 let the guy, you know, fade back into society,"
8 because I'm concerned for the general public.

9 MR. PRESNELL: I really agree with that as
10 well.

11 I would much prefer seeing that person,
12 yes.

13 DR. KING: So, Dr. Naberhaus, what you're
14 saying is that at the date the Final Order was
15 approved by the Board, he should have appeared
16 before the Board?

17 DR. NABERHAUS: No. The Final Order says
18 -- instead of just the Probation Committee
19 dealing with it, one person, he had to come
20 before the full Board during this process.

21 DR. KING: During the probation.

22 DR. NABERHAUS: Yes.

23 MR. HARRIS: The specific term was
24 probation. Obligations during probation. This
25 is (7) (b) (1) on page 341 of your materials.

1 "Respondent shall appear before the
2 Probation Committee of the Board of Optometry at
3 the first Committee meeting after probation
4 commences; at the last meeting of the Committee
5 preceding scheduled termination of probation;
6 and at such other times as requested by the
7 Committee."

8 So then the Board, when they considered the
9 settlement agreement, they counter-offered, and
10 they said that instead of the Probation
11 Committee, it shall be before the full Board.

12 So that means he had to appear before the
13 full Board at the first Board meeting after
14 probation commenced; at the last meeting prior
15 -- preceding scheduled termination; and at such
16 other times as requested by the Board.

17 So if he did not do that, then he is in
18 violation of a Final Order of the Board. And so
19 what I think the appropriate process would be
20 for the staff to go back and look into this. Or
21 maybe they would refer it to investigations; I
22 don't know how it works.

23 But basically somebody would go back and
24 look at the minutes to see if starting in March
25 of 2009, if this guy ever appeared before the

1 full Board.

2 And if he did, then maybe they would either
3 close the complaint or whatever. If he did not,
4 if he didn't comply with this, they would then
5 make a decision, you know, at the investigatory
6 stage or whatever, to move forward in the
7 disciplinary process. And so --

8 DR. NABERHAUS: Well, as far as I know,
9 he's supposed to be before us before this last
10 one as well, correct? Is that --

11 MR. HARRIS: No. Just with his probation.

12 DR. NABERHAUS: Just during his --

13 MR. HARRIS: Yeah. It was before his
14 probation started.

15 DR. NABERHAUS: Yeah.

16 MR. HARRIS: And then after his probation
17 was termination.

18 His probation was terminated after one year
19 and six months, 18 months. He was only on
20 probation, according to the settlement agreement
21 --

22 DR. NABERHAUS: Okay.

23 MR. HARRIS: -- for 18 months.

24 DR. NABERHAUS: Okay.

25 MR. HARRIS: So this would have been back

1 in 2009, 2010.

2 DR. NABERHAUS: So with this contract with
3 PRN what exactly are we doing?

4 MR. HARRIS: Nothing.

5 DR. NABERHAUS: It wasn't part of what we
6 had to worry about in terms of his probation.

7 MR. HARRIS: Correct.

8 DR. NABERHAUS: Okay.

9 MR. HARRIS: And I don't know why this
10 matter is before you, other than -- so that they
11 -- PRN might have realized how seriously you
12 were taking this --

13 DR. NABERHAUS: Right.

14 MR. HARRIS: -- and wanted to let you guys
15 know that he had complied with the contract.

16 DR. NABERHAUS: All right.

17 MR. HARRIS: As like an FYI.

18 DR. NABERHAUS: Thank you.

19 CHAIRMAN UNDERHILL: Do you want to make
20 the motion?

21 DR. NABERHAUS: Do I need a motion for
22 that?

23 MR. HARRIS: You don't.

24 DR. NABERHAUS: Staff could look at it and
25 see where we are, basically.

1 CHAIRMAN UNDERHILL: If you're going to
2 file an additional complaint for failure to
3 comply?

4 MR. HARRIS: And remember, what we're
5 talking about is they're going to investigate.
6 Because clearly we're not talking about the
7 specifics of anything. We don't want you all to
8 be recused.

9 DR. NABERHAUS: Right.

10 MR. HARRIS: So what we're talking about
11 here is you all have a question.

12 DR. NABERHAUS: Did he do that, what he was
13 supposed to do?

14 MR. HARRIS: Right. And you're asking that
15 somebody look into that. And if the answer is,
16 no, he didn't do it, then whoever that somebody
17 is will take whatever the appropriate action is.

18 So we're not talking about any specific
19 vote or direction. You guys aren't doing
20 anything that would --

21 CHAIRMAN UNDERHILL: So the Chair can just
22 direct the staff to do that?

23 MR. HARRIS: I don't think we wan to do
24 that. I think they're sitting here smiling. So
25 they know what they need to do.

1 MS. RODGERS: Yes.

2 MR. HARRIS: I would take no further
3 action. Let's move on.

4 (Laughter.)

5 MS. RODGERS: I actually was trying to look
6 up attendance on the computer and realized our
7 database is changing over today, so I can't.

8 (Laughter.)

9 CHAIRMAN UNDERHILL: All right. So y'all
10 look into that and then we'll know where to go
11 after that.

12 DR. KAPLAN: Speaking of which, are we
13 going to be getting computers for our next
14 meeting?

15 MR. HARRIS: They're going to get
16 computers? Oh, man. I've been waiting like two
17 years to get a computer. I know, man.

18 MS. RODGERS: No.

19 CHAIRMAN UNDERHILL: Why am I not
20 surprised?

21 Okay. Onward to -- where are we at?
22 Dr. King, Examination.

23 I'm assuming you have nothing to report.

24 DR. KING: No report.

25 CHAIRMAN UNDERHILL: FOA. Actually that

1 should be Dr. Kaplan.

2 Do you have anything, Dr. Kaplan?

3 DR. KAPLAN: No, sir.

4 CHAIRMAN UNDERHILL: Healthy Weight?

5 DR. KING: I have not received any further
6 information or direction from the Department of
7 Health on this initiative.

8 I was getting ready to just simply say "no
9 report," but I will say that my wife's Kiwanis
10 Club got a presentation. But I have not been
11 told that we, as a Board, are involved in any
12 way or we need to do anything at this point in
13 time.

14 CHAIRMAN UNDERHILL: Wasn't your picture on
15 that thing or something?

16 DR. KING: Right. Yeah, I was on the Board
17 website.

18 CHAIRMAN UNDERHILL: Yeah.

19 UNIDENTIFIED SPEAKER: You look good.

20 CHAIRMAN UNDERHILL: You look good. You
21 looked real good, I thought.

22 DR. KING: (Unintelligible.)

23 MS. RODGERS: There is a script that has
24 been drafted by the public relations people at
25 the Department of Health regarding Healthiest

1 Weight, and I'll be getting with all of the
2 representatives on each Board to give them their
3 script and go over it with them.

4 CHAIRMAN UNDERHILL: All right. Thank you,
5 Dr. King.

6 Legislative. I have nothing.

7 Probable Cause. Mr. Presnell, I think that
8 --

9 MR. PRESNELL: (Not using microphone.)
10 Were you going to --

11 THE REPORTER: Excuse me. Is your
12 microphone on?

13 CHAIRMAN UNDERHILL: Microphone.

14 MR. PRESNELL: I'm sorry. Were you going
15 to talk about Probable Cause?

16 MS. JONES: Actually, I didn't have a
17 specific presentation.

18 MR. PRESNELL: Okay.

19 MS. JONES: It was my understanding that
20 the issue with regard to the scheduling of
21 Probable Cause was going to be discussed at
22 today's meeting, but it wasn't going to be my
23 presentation.

24 MR. PRESNELL: I have nothing.

25 CHAIRMAN UNDERHILL: Does staff or anything

1 have any discussion for Probable Cause. I know
2 I got some emails from Jose about it, and I
3 think I copied you on one of them to see if he
4 had ever satisfied himself of what he was
5 looking for and --

6 MS. RODGERS: We were apparently having
7 difficulty getting Panel members at one point.

8 Some of our former members now do not want
9 to be on the Panel.

10 MR. HARRIS: No comment on Mr. Presnell's
11 chairing of the Panel, I'm sure.

12 MS. RODGERS: No, none.

13 MR. PRESNELL: No, no. I was -- yeah, I'm
14 good.

15 MS. RODGERS: I believe Jose called every
16 former member -- professional member he could
17 find and was unable to get anyone to agree. So
18 we're now looking for a current seated member to
19 participate in Probable Cause.

20 I don't believe that would cause any quorum
21 issues unless the flu strikes and we have
22 several people out at one time.

23 MR. HARRIS: Right. So what would happen
24 is, you know, you've got to have at least two
25 members on the Probable Cause Panel.

1 The statute says that the -- at least one
2 member has to be a currently serving Board
3 member. And then the other can be either -- and
4 it doesn't have to just be two. It could be
5 three or four or five, whatever it is. But one
6 has to be a current Board member. The others
7 can be prior Board members.

8 The issue is up until very recently we've
9 had prior Board members who were willing to
10 serve on these Panels. But for those of you who
11 have been on a Probable Cause Panel, you know,
12 it can be a pretty large amount of documentation
13 you have to get through. So they're having a
14 difficult time finding prior members.

15 Well, you've got to have a Probable Cause
16 Panel and you've got to have at least two
17 members. If you can't find former Board members
18 who are willing to serve, that means two of you
19 all are up.

20 So what that means is those Board members
21 then would be recused from participation in
22 those items. Well, you have seven appointed
23 members. If you knock it back -- if two of them
24 are recused that still gives you five members.

25 DR. MAULE: Uh-huh.

1 MR. HARRIS: You need to have basically
2 four in order to have a quorum. So as long as
3 you have four members who aren't recused, you'd
4 be all right if you have like, Ms. Rodgers said,
5 some type of a flu and people are absent. You
6 essentially wouldn't be able to act on those
7 matters and they would have to get kicked to
8 either a special Board meeting or the following
9 Board meeting, you know, where you could have a
10 quorum.

11 DR. KAPLAN: Does the paperwork get sent to
12 you or do you have to go to Tallahassee?

13 MR. HARRIS: No, it gets sent to you. You
14 get a big stack of stuff in the mail.

15 CHAIRMAN UNDERHILL: But you have to go to
16 the Probable Cause meeting.

17 MR. HARRIS: Yeah. Telephone conference
18 call.

19 DR. KAPLAN: Conference calls.

20 MR. HARRIS: It's a conference call; you
21 call in.

22 Mr. Presnell maybe could explain it.

23 DR. KAPLAN: How often --

24 (CROSSTALK.)

25 DR. NABERHAUS: To make some comments on

1 Probable Cause. I've been on Probable Cause
2 quite a bit, too.

3 I would caution folks to only have two on
4 Probable Cause because I have run into, at least
5 twice, where the two Probable Cause members
6 disagree. And that presents a problem because
7 now the Department has the option -- has the --
8 basically the right to make the decision. So at
9 all possibly, you really want to have three.

10 So my question to you, Mr. Harris, is as we
11 as Board members, can we recruit some Probable
12 Cause people or is that not -- because I think
13 we should try to recruit some of the prior Board
14 members to -- you know, to step up to the plate
15 here because we need their help.

16 (CROSSTALK.)

17 MR. HARRIS: And they do get --

18 DR. NABERHAUS: Pardon me.

19 MR. HARRIS: You do get CE for being on a
20 Probable Cause Panel.

21 DR. NABERHAUS: Well, I think maybe part of
22 the problem is -- because I know people have
23 voiced concerns to me is that some of these have
24 been on conference calls and, you know, as the
25 Chairman says, it's very difficult on these

1 things to be on conference calls with these
2 Probable Cause meetings, and I'm not sure where
3 we stand within the Department of having
4 face-to-face Probable Cause. We used to try to
5 do those either the morning before the meeting
6 or the night before.

7 MR. HARRIS: Uh-huh.

8 DR. NABERHAUS: It certainly makes the
9 person who's participating feel like they're
10 participating rather than just, you know, I've
11 got all these papers on my desk, and, you know,
12 it's a little difficult. Especially when you're
13 looking at a lot of statutes. You know, you've
14 got a lot of numbers. You're trying to, you
15 know, talk about things and everybody's
16 shuffling papers on their desk and they can't
17 see what you're talking about.

18 So it's a pretty cumbersome activity doing
19 Probable Cause on a telephone conference call.
20 So I think there's a couple issues there for
21 reasons why people may not want to volunteer.

22 So I would encourage everybody to try to --
23 to recruit folks and maybe if we can try to have
24 these Probable Cause meetings when it makes
25 sense from an economic standpoint to do so.

1 MR. HARRIS: It would be certainly, and I'm
2 not speaking for Ms. Guillemette, but it
3 certainly would be absolutely possible to tag it
4 on to a Board meeting. Either, like you said,
5 the night before or -- you know, most of these
6 meetings get done fairly early, you know,
7 usually around noon. You could do it afterwards
8 --

9 DR. MAULE: Uh-huh.

10 MR. HARRIS: -- you know, even if you
11 wanted to.

12 The only issue you have is a little bit of
13 a security issues. You have to have sort of a
14 secured room, so we'd have to be able to close
15 the doors and turn off the microphones, except
16 for the tape recorder, so that people couldn't
17 be standing outside listening.

18 DR. MAULE: Uh-huh.

19 MR. HARRIS: But that's certainly doable.

20 I know there's at least two Boards that --
21 that I am aware of that do live Probable Cause
22 meetings. Both of them involve a lot of x-rays
23 and it's impossible to look at x-rays, you know,
24 by telephone.

25 So if they're looking at the x-ray matters

1 --

2 CHAIRMAN UNDERHILL: Ms. Jones?

3 MS. JONES: Just something for your
4 consideration with regard to the timeframes,
5 whether you want to do it the evening before,
6 the day before, or whether you wanted to do it
7 the day of the Board meeting.

8 What we try to do since the Optometry,
9 along with many of our other Boards, they are
10 as-needed meetings. Sometimes we may get a case
11 and then we'll wait, because we don't want to
12 pull you away from your caseload or whatever for
13 one case. So we try to at least have three or
14 four cases or more.

15 The current Panel that's -- well, if we get
16 one scheduled, you're going to have at least --
17 at least nine, potentially eleven or twelve
18 cases.

19 UNIDENTIFIED SPEAKER: Wow.

20 MS. JONES: Because we've been trying to
21 schedule a meeting, so they've been kind of
22 being building as we're waiting.

23 So that's just something you might want to
24 keep in mind as far as scheduling of your next
25 meeting.

1 It's not going to be a small number, the
2 next go-around, when we do get a meeting
3 scheduled. And we try to at least have four to
4 make it worth your while to be pulled away from
5 your schedule.

6 DR. MAULE: So can I ask a question? Would
7 it make sense to have a number of us that are
8 seated Board members be on the Panel and then
9 kind of spread out the -- the caseload, if it's
10 that much work? Like, you know, maybe this
11 month I'm on Probable Cause and next month
12 Stuart is, so that -- you know, we're all
13 capable of doing it and I certainly would
14 volunteer, but you know maybe if we wouldn't all
15 be on the same case, you know.

16 MR. HARRIS: I have a number -- I
17 personally have a number of Boards, and
18 Ms. Guillemette I'm sure had this, where there's
19 one, two or even three Panels of different
20 members.

21 DR. MAULE: Right.

22 MR. HARRIS: And then you basically rotate.
23 There's (a), (b) and (c).

24 DR. MAULE: Uh-huh.

25 MR. HARRIS: And now you go (a) and then

1 you go to (b) and then you go to (c), and that
2 way, instead of doing one every -- every
3 quarter, maybe you get to do one once a year,
4 kind of a thing.

5 DR. MAULE: Uh-huh.

6 MR. HARRIS: So that's certainly something
7 doable.

8 CHAIRMAN UNDERHILL: I have thoughts of
9 doing it by region, so that, depending on where
10 the meeting was going to be --

11 DR. MAULE: Uh-huh.

12 CHAIRMAN UNDERHILL: -- we had a select
13 Panel for the north region, the central region
14 and the south region.

15 DR. MAULE: Uh-huh.

16 CHAIRMAN UNDERHILL: So that if the meeting
17 was in the north region, that Panel would handle
18 those. If the meeting was in the Orlando area
19 --

20 DR. NABERHAUS: No.

21 CHAIRMAN UNDERHILL: -- that Panel would
22 handle that.

23 DR. NABERHAUS: As a question, are you the
24 Chairman, the person who appoints these folks?

25 CHAIRMAN UNDERHILL: I believe so.

1 MR. HARRIS: Yes.

2 DR. NABERHAUS: Okay. Have you done that?

3 CHAIRMAN UNDERHILL: I have appointed. I
4 haven't changed the appointments --

5 DR. NABERHAUS: Okay.

6 CHAIRMAN UNDERHILL: -- over what we've had
7 in two years, and I wasn't aware that there was
8 really an issue with people either resigning or
9 reluctance.

10 MS. RODGERS: Until recently there wasn't.

11 CHAIRMAN UNDERHILL: There wasn't.

12 DR. NABERHAUS: Because I would caution the
13 Chairman that if you can, make sure you put at
14 least one person who has experience on that.
15 Because it is a little difficult and a little
16 bit intimidating if you've not done Probable
17 Cause before. It's a lot of work and a lot of,
18 you know, statutes and stuff.

19 So you need to -- you know, you need to
20 kind of be -- someone there who can kind of help
21 with the process. Obviously the prosecuting
22 attorneys are there as well, but they're not
23 there to tell you what to do. You have to kind
24 of figure it out on your own, so it's kind of
25 nice to have somebody to help -- you know, who

1 has been there before.

2 And there's supposed to be a lay person on
3 that as well, correct? Larry?

4 MS. RODGERS: Consumer members, yes.

5 DR. NABERHAUS: There's supposed to be a
6 lay person as well, right.

7 (CROSSTALK.)

8 DR. KAPLAN: That's Mr. Presnell.

9 CHAIRMAN UNDERHILL: Do you have any issues
10 with that, Rod?

11 MR. PRESNELL: No. None at all.

12 CHAIRMAN UNDERHILL: You're okay?

13 MS. GUILLEMETTE: I just wanted to -- to
14 bring it to your attention.

15 You know, legal counsel is always there.
16 So if you have any questions or if you want to
17 go over the materials prior to the Probable
18 Cause meeting, just feel free to call me. I'm
19 always available for you, and get back to you as
20 soon as I can.

21 MS. RODGERS: One consideration, again.
22 Remembering our travel has been somewhat
23 restricted. I would have to verify, if you want
24 to have the Probable Cause Panel meet in
25 conjunction with a face-to-face optometry Board

1 meeting, I'd have to verify whether I can pay a
2 former Board member the per diem, what I can pay
3 for travel, and so on.

4 And that may impact your former Board
5 members' willingness to serve.

6 The idea of regional is very appealing
7 because maybe that would offset some of the
8 costs that they may have to bear on their own.
9 But I will check into reimbursement for them.

10 CHAIRMAN UNDERHILL: Can I -- can I have
11 Board members submit names, if possible, of
12 people to serve on that to me without having to
13 do it at a meeting?

14 MS. RODGERS: I think they would have to
15 submit them to me.

16 CHAIRMAN UNDERHILL: Well, I mean -- but I
17 choose who they are, appoint them.

18 MS. RODGERS: Yes. Yes.

19 CHAIRMAN UNDERHILL: So -- but they could
20 submit them to you, and then you and I can
21 discuss them?

22 MS. RODGERS: Yes.

23 CHAIRMAN UNDERHILL: That's perfectly fine.

24 MS. RODGERS: Mr. Harris needs to --

25 MR. HARRIS: I'm sorry. What are we

1 talking about? I was looking at something else
2 that I was going to comment on.

3 CHAIRMAN UNDERHILL: I was going to try to
4 canvas our Board to go out and make
5 recommendations for --

6 MR. HARRIS: Uh-huh.

7 CHAIRMAN UNDERHILL: -- possible Probable
8 Cause members.

9 MR. HARRIS: Right. Yes, sir.

10 CHAIRMAN UNDERHILL: And then have them
11 submit it to --

12 MS. RODGERS: To me.

13 CHAIRMAN UNDERHILL: -- Dr. Rodgers and
14 then I would --

15 MR. HARRIS: Right.

16 CHAIRMAN UNDERHILL: -- meet with her and
17 we would --

18 MR. HARRIS: That would be perfect.

19 DR. KAPLAN: So it's people that you had to
20 have been on the Board prior or current?

21 MR. HARRIS: Yeah. But here's what I'm
22 going to read. It's in 456 -- 456.011,
23 Subsection (4).

24 "Unless otherwise provided by law, a Board
25 member or a former Board member serving on a

1 Probable Cause Panel shall be compensated \$50
2 for each day in attendance at an official
3 meeting of the Board, and for each day of
4 participation in any other business involving
5 the Board. Each Board shall adopt rules
6 defining other business."

7 So I think if the Department tried to give
8 you a hard time, you would just show them the
9 statute and say, "This is clearly contemplating
10 former Board members serving on Probable Cause
11 Panels," and I don't think you would have a
12 problem paying for the travel and the \$50 per
13 diem, which I know for you guys is huge. I
14 mean, clearly --

15 CHAIRMAN UNDERHILL: I can't wait to get
16 out of the office for that.

17 MR. HARRIS: Right. That 50 bucks is
18 probably, you know --

19 DR. MAULE: (Not using microphone.)

20 MR. HARRIS: Right. But, yes. And then
21 what you would do is you all could canvas or
22 call or twist arms, or do whatever; get those
23 names. And then Ms. Rodgers and the Chairman
24 would discuss it. Because the Chairman is who
25 appoints to the Panels.

1 CHAIRMAN UNDERHILL: So I would appeal to
2 the Board members to look at potential Probable
3 Cause members, to appoint to the Panels, and
4 submit that to her and then we can --

5 DR. MAULE: Don't we have a list of former
6 Board members that you could just be provided
7 and go down that list?

8 CHAIRMAN UNDERHILL: Well I think we
9 probably need to ask them.

10 DR. MAULE: Oh, so you mean you want us to
11 like --

12 CHAIRMAN UNDERHILL: See if they're
13 willing, to get some idea what --

14 DR. MAULE: -- twist some --

15 MS. RODGERS: Yes. Our office calling them
16 was not successful, so we're hoping you in the
17 profession --

18 DR. KAPLAN: Yeah. But if we have a list
19 of who was on the Board.

20 MS. RODGERS: Oh, certainly. I can provide
21 a list.

22 DR. KAPLAN: Okay.

23 CHAIRMAN UNDERHILL: I really advise that
24 to the Board members, and then they can look
25 through that list, see if there's potential

1 members and then contact them and see if they
2 would agree to do that for the great sum of 50
3 bucks.

4 DR. NABERHAUS: Plus I really think it will
5 help if you can do the face-to-face meeting for
6 those folks. I think they would really feel
7 more like they're getting more out of it.
8 Because --

9 CHAIRMAN UNDERHILL: Face-to-face, meaning
10 Probable Cause?

11 DR. NABERHAUS: Probable Cause,
12 face-to-face.

13 CHAIRMAN UNDERHILL: Yes.

14 DR. NABERHAUS: Like if we do a meeting --
15 (CROSSTALK.)

16 CHAIRMAN UNDERHILL: -- with the travel and
17 everything.

18 MS. RODGERS: Yes.

19 CHAIRMAN UNDERHILL: All right. So we'll
20 see if we can't come up with some restructuring
21 a little bit.

22 MS. RODGERS: Thank you.

23 CHAIRMAN UNDERHILL: Probable Cause.
24 Stats. We've already seen that Stats on that,
25 correct? Did we --

1 MS. RODGERS: They're in your book, a
2 couple pages.

3 CHAIRMAN UNDERHILL: Yeah. 354. Right
4 there.

5 So hopefully we've made in our inroads with
6 the Department in terms of using Dr. McClain
7 efficiently and we still need to just really pay
8 a lot of attention to that.

9 MS. RODGERS: And I will certainly try to
10 keep up with that. It may be more successful if
11 Ms. Jones keeps up with that as well.

12 MS. JONES: Sure.

13 CHAIRMAN UNDERHILL: And if there's any
14 difficulty, if you could report that back to the
15 Board, that would be our preference.

16 Dr. Naberhaus, Rules.

17 DR. NABERHAUS: Well, I thought since we're
18 all having so much with Mrs. Holiday, that we'd
19 go ahead and put a whole bunch more rules in
20 there and see what kind of trouble we can have
21 --

22 MR. HARRIS: Let's do it.

23 DR. NABERHAUS: -- keep everybody busy. So
24 I've been canvassing 15/20 -- No, I'm just
25 kidding. I have nothing to say.

1 (Laughter.)

2 MR. HARRIS: I know Ms. Guillemette would
3 love --

4 DR. NABERHAUS: Oh, absolutely. I'm sure.

5 MR. HARRIS: -- to have a bunch of rules in
6 process right now.

7 (Laughter.)

8 DR. NABERHAUS: I have nothing. Thank
9 goodness.

10 CHAIRMAN UNDERHILL: I did have someone
11 from -- I think they were on the Board of
12 Opticianry -- mention something about our rule
13 about how long an eyeglass prescription is
14 valid, and they wanted us to revisit that to see
15 if five years was an appropriate thing or not.

16 DR. KAPLAN: Yeah. One of the problems is
17 it's in 463.

18 CHAIRMAN UNDERHILL: No, you can't do
19 anything with that.

20 DR. KAPLAN: Yeah. It's in 463 in addition
21 to our rules.

22 CHAIRMAN UNDERHILL: That's something the
23 FOA might take notice of then if it's something
24 going on with the --

25 DR. KAPLAN: It's 463.012.

1 CHAIRMAN UNDERHILL: -- might look to see
2 if the five years is still an appropriate amount
3 of time or whether it needs to be changed.

4 Any other rules' issues that somebody wants
5 to bring up, get Dr. Naberhaus to do something?

6 (No response.)

7 None? Okay.

8 And Unlicensed Activity. Dr. Kaplan, any
9 information?

10 DR. KAPLAN: None, sir.

11 CHAIRMAN UNDERHILL: All right. So that
12 brings us to our next meeting date, which will
13 be February the 27th, back in the Mouse House
14 country. Orlando.

15 We're going to meet here again, you think?
16 Will it be at the same place? They like this
17 spot or no?

18 MS. RODGERS: The Embassy -- this --

19 THE REPORTER: It's not on.

20 MS. RODGERS: This particular Embassy
21 Suites seems to be one that accepts purchase
22 orders, doesn't mind having small meetings,
23 small number of attendees. So, yes, it's likely
24 we may be back here.

25 DR. MAULE: It's very nice here.

1 DR. NABERHAUS: Now I know where it is.

2 CHAIRMAN UNDERHILL: It was kind of tricky
3 to get here.

4 MS. RODGERS: (Laughter.)

5 CHAIRMAN UNDERHILL: Just a little bit,
6 but, hey, we all made it.

7 So I'll accept a motion to adjourn.

8 MS. RODGERS: Not yet, please. Wait, wait,
9 wait.

10 CHAIRMAN UNDERHILL: What happened?

11 MS. RODGERS: This is the end of the year,
12 2014. We need to have elections.

13 CHAIRMAN UNDERHILL: What do we elect?

14 DR. KAPLAN: I made a motion to keep the
15 current --

16 CHAIRMAN UNDERHILL: This is even better
17 than I thought.

18 DR. KAPLAN: -- Chairman current.

19 DR. MAULE: I second that.

20 (Laughter.)

21 DR. KAPLAN: I have no discussion.

22 CHAIRMAN UNDERHILL: You do what?

23 DR. KAPLAN: It's already been motioned and
24 seconded --

25 DR. MAULE: Motion --

1 DR. KAPLAN: -- to keep the current Chair
2 and Vice-Chair.

3 CHAIRMAN UNDERHILL: What did I do?

4 (Laughter.)

5 DR. KAPLAN: Call the question.

6 CHAIRMAN UNDERHILL: Call the question.

7 All right.

8 Discussion? (No response.)

9 DR. MAULE: Good job.

10 CHAIRMAN UNDERHILL: I think we'll just sit
11 here for a while. The Board may want to
12 reconsider.

13 MR. HARRIS: You control the motion,
14 Mr. Chairman.

15 CHAIRMAN UNDERHILL: All in favor say aye.

16 (Board members responded.)

17 Opposed? Aye.

18 UNIDENTIFIED SPEAKER: One opposed.

19 CHAIRMAN UNDERHILL: I feel like Rick
20 Scott.

21 (Applause.)

22 UNIDENTIFIED SPEAKER: Do we have a
23 shredder bin?

24 MS. RODGERS: We need a Vice-Chair.

25 MR. HARRIS: The motion was the Chair and

1 the Vice-Chair.

2 MS. RODGERS: Oh, I'm sorry.

3 CHAIRMAN UNDERHILL: Correct.

4 MS. RODGERS: Thank you.

5 CHAIRMAN UNDERHILL: (Not using
6 microphone.)

7 DR. MAULE: Is this like our earliest
8 adjournment ever or what?

9 CHAIRMAN UNDERHILL: We are adjourned.

10 (The November 2014 Board of Optometry
11 meeting concluded at 11:44 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF ORANGE)

I, DIANA C. GARCIA, Court Reporter, certify that I was authorized to and did report the aforementioned November 2014 Board of Optometry meeting, and that the transcript is a true and complete record of my notes and recordings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I financially interested in the outcome of the foregoing action.

DATED this 28th day of December, 2014.

DIANA C. GARCIA, Court Reporter
Notary Public, State of Florida

Commission No: EE 121442
Commission Expiration: 08/14/15