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**DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
BOARD OF OPTOMETRY**

**MINUTES – DRAFT
TELEPHONE CONFERENCE**

March 21, 2014

General Board Business started: 9:01 a.m.

CALL TO ORDER:

Dr. Timothy Underhill, Chairman, called the meeting to order at 9:01 a.m. Those present for all or part of the meeting included the following:

BOARD MEMBERS:

Timothy Underhill, O.D., Chair
Stuart Kaplan, O.D., Vice-Chair
Terrance Naberhaus, O.D.
Tamara Maule, O.D.
Christopher King, O.D., F.A.A.O.
Rosa McNaughton, J.D., M.S.
Rod Presnell, R.Ph.

BOARD STAFF:

Anthony Jusevitch, Acting Executive Director
Sharon Guilford, Program Operations Administrator
Jose Montalvan, Regulatory Supervisor/Consultant
Kenneth Smith, Regulatory Specialist II
Savada Knight, Regulatory Specialist II

BOARD COUNSEL:

Larry Harris, Assistant Attorney General
Office of Attorney General

APPROVAL OF MINUTES:

December 20, 2013 – Telephone Conference Call

Dr. Underhill moved to approve the above minutes with noted corrections. The motion was seconded and carried 7/0.

December 6, 2013 – Full Board Meeting

1 **Dr. King moved to approve the above minutes with corrections to page 14 line 17**
2 **replacing 64B13-18.001 with 64B13-10.001; and page 17 line 5 replacing King with**
3 **Kaplan. The motion was seconded and carried 7/0.**

4
5 **OVERVIEW OF REVIEWING DISCIPLINARY CASES – John McClane, O.D.**

6
7 Dr. McClane provided an overview of the disciplinary cases that he had reviewed:

- 8
9
 - 10 • 2012 - 18 cases
 - 11 • 2013 - 40 cases
 - 12 • 2014 - 2 cases

13 Dr. McClane stated that he would recommend having an expert witness to further the
14 investigation, violations, dismissing the cases, etc. He also stated that once he returns the
15 case(s) he was unaware the outcome with the case.

16
17 Ms. Rosa McNaughton requested the department to provide the case load including,
18 Probable Cause Panel, Administrative Complaint, etc.

19
20 Mr. Jusevitch stated he will contact the attorney to determine if Dr. McClane can assist
21 with Prosecution Services and if the additional violations he found were acted upon.

22
23 Mr. Presnell requested from board staff whether Dr. McClane's recommendations were
24 acted upon by the prosecuting attorney, and when the panel requested further
25 investigation does the prosecuting attorney take action in receiving the additional
26 information. He also would recommend additional violations that may not be on the
27 investigative complaint.

28
29 Mr. Jusevitch stated that he would contact prosecuting attorney and would provide the
30 information at the next meeting.

31
32 **PETITIONS FOR VARIANCE/WAIVER:**

33
34 **John H. Bannwarth, O.D. – Rule 64B13-4.001(2), Florida Administrative**
35 **Code, Examination Requirements**

36
37 Dr. Bannwarth was present but was not represented by counsel.

38
39 Dr. Underhill stated that Dr. Bannwarth was requesting a Petition for Variance/Waiver of
40 Rule 64B13-4.001(2), F.A.C., requiring the NBEO scores within 7 years from application
41 given that his part I was taken December 2006.

42
43 Dr. Bannwarth addressed the board.

44
45 Discussion ensued.

1 **Dr. King moved to deny Dr. Bannwarth’s request to Petition for Variance/Waiver of**
2 **Rule 64B13-4.001(2), F.A.C., to allow him to resubmit the petition in a proper**
3 **format. The motion was seconded and carried 7/0.**

4
5 **Isaac Chiang, O.D. – Rule 64B13-4.001, Florida Administrative Code –**
6 **Examination Requirements**

7
8 Dr. Chiang was present but was not represented by counsel.

9
10 Mr. Harris stated that Dr. Chiang was requesting a Petition for Variance/Waiver of Rule
11 64B13-4.001, F.A.C., requiring NBEO, Part III-Clinical Skills (CSE) in which portions
12 of the examination must obtain a score of 75% or better on the Biomicroscopy, Binocular
13 Indirect Ophthalmoscopy, and Dilated Biomicroscopy and Non-Contact Fundus Lens
14 Evaluation skills. He specifically requested waiver of the score of 75% or better on the
15 Dilated Biomicroscopy and Non-Contact Fundus Lens Evaluation skills portion of the
16 CSE exam.

17
18 Dr. Chiang addressed the board.

19
20 Discussion ensued.

21
22 **Dr. Naberhaus moved to deny Dr. Chiang’s request to Petition for Variance/Waiver**
23 **of Rule 64B13-4.001, F.A.C., for failure to provide evidence of a financial hardship**
24 **according to Chapter 456.036, F.S. The motion was seconded and carried 7/0.**

25
26 **PETITION FOR VARIANCE/WAIVER – Ashley Setterberg, O.D. – Rule 64B13-**
27 **4.001, F.A.C. – Examination Requirements**

28
29 Mr. Harris stated that Dr. Chiang was requesting a Petition for Variance/Waiver of Rule
30 64B13-4.001, F.A.C., requiring the passing scores of Part I of the licensure examination
31 within seven years immediately preceding application to take Part IV of the licensure
32 examination.

33
34 Discussion ensued.

35
36 **Dr. Kaplan moved to deny Dr. Setterberg’s request to Petition for Variance/Waiver**
37 **of Rule 64B13-4.001, F.A.C., for failure to provide evidence of a financial hardship**
38 **according to Chapter 456.036, F.S. The motion was seconded and carried 7/0.**

39
40 **CORRESPONDENCE:**

41
42 The rule states that you have to pass both with at least 75%.

43
44 **Oaluwiesi Aluqiesi, O.D. – Examination Questions**

45
46 Dr. Alugiesi was present.

1
2 Mr. Montalvan provided an overview of Dr. Aluqiesi's questions. He also stated that the
3 board staff needed to know how to process an application with this issue.

4
5 The board stated that the rule may be unclear but the intent of the rule was to have
6 successfully passed all parts with a score of 75%.

7
8 Mr. Harris stated that he would draft language clarifying Rule 64B13-4.001(c), F.A.C.
9 and provide the board with the language at the next board meeting.

10
11 **Sara Berke-Silva – Examination Questions**

12
13 Dr. Berke-Silva was present and addressed the board.

14
15 Mr. Montalvan provided an overview of Dr. Berke-Silva's questions. He also stated that
16 the request was similar to the previous application.

17
18 The board stated that Dr. Berke-Silva would need to successfully pass all parts of the
19 examination with a score of 75%.

20
21 **Nina Lemberg, O.D. – Examination Questions**

22
23 Dr. Lemberg was present and addressed the board.

24
25 Mr. Montalvan provided an overview of Dr. Lemberg's questions. He also stated that the
26 request was similar to the previous application.

27
28 The board stated that Dr. Lemberg would need to successfully pass all parts of the
29 examination with a score of 75%.

30
31 Further discussion ensued.

32
33 The board stated that Dr. Lemberg may contact the board staff to possibly file a Petition
34 of Variance/Waiver of the rule.

35
36 **Rovetta Mattia, O.D. – Examination Questions**

37
38 Dr. Mattia was present and addressed the board.

39
40 Mr. Montalvan provided an overview of Dr. Mattia's questions. He also stated that the
41 request was similar to the previous application.

42
43 The board stated that Dr. Mattia's would need to successfully pass all parts of the
44 examination with a score of 75%.

45
46 **Mary Nguyen – Examination Questions**

1
2 Dr. Nguyen was present and addressed the board.

3
4 Mr. Montalvan provided an overview of Dr. Nguyen's questions. He also stated that the
5 request was similar to the previous application.

6
7 The board stated that Dr. Nguyen would need to successfully pass all parts of the
8 examination with a score of 75%.

9
10 **Tanzila Rahman – Examination Questions**

11
12 Dr. Rahman was present and addressed the board.

13
14 Mr. Montalvan provided an overview of Dr. Rahman's questions. He also stated that the
15 request was similar to the previous application.

16
17 The board stated that Dr. Rahman would need to successfully pass all parts of the
18 examination with a score of 75%.

19
20 **SUNY College of Optometry – 64B13-5.002(3)(c), Florida Administrative**
21 **Code, Criteria for Approval**

22
23 Dr. Richard Madonna, Director, and Mr. Betshally Torres, Associate Director, Office of
24 Continuing Professional Education with Suny College of Optometry were not present.

25
26 Mr. Harris stated that Dr. Madonna was requesting a Petition for Variance/Waiver of
27 Rule 64B13-5.002(3)(c), F.A.C., requiring that continuing education course be approved
28 as Transcript Quality hours prior to the course being offered. The Office of Continuing
29 Professional Education recognized their error and requested permanent waiver of the rule
30 due to new staff had assumed that the course could be submitted after the course offering.

31
32 Discussion ensued.

33
34 **Dr. Maule moved to reconsider the Notice of Intent to Deny for College of**
35 **Optometry – 64B13-5.002(3)(c), F.A.C. The motion was seconded and carried 7/0.**

36
37 The board inquired whether the board had approved such petition.

38
39 The board staff stated no.

40
41 Dr. Underhill stated that the board should require all providers to meet the rule
42 requirements.

43
44 **Dr. Kaplan moved to deny SUNY College of Optometry's request to Petition for**
45 **Variance/Waiver of Rule 64B13-5.002(3)(c), F.A.C., for failure to provide evidence**
46 **of a financial hardship according to Chapter 456.036, F.S. The motion was seconded**

1 **and carried 7/0.**

2
3 **REQUEST FOR APPROVAL OF 100 HOUR THERAPEUTIC**
4 **PHARMACEUTICAL AGENT COURSE**

5
6 Mr. Harris stated that the course was withdrawn from the agenda.

7
8 **APPROVAL TO PAY MEMBERSHIP DUES – ARBO**

9
10 **Dr. Kaplan moved to pay the annual membership dues to ARBO. The motion was**
11 **seconded and carried 7/0.**

12
13 **CHAIR/VICE-CHAIR REPORT:**

14
15 **Future Agenda Items**

- 16
17 • 64B13-6.006(2) – adding oral medication

18
19 The board discussed adding ocular pharmaceutical agents to Rule 64B13-6.006(2),
20 F.A.C.

21
22 **Dr. Kaplan moved to file a Notice of Rule Development for Rule 64B13-6.006(2),**
23 **F.A.C., with the language to include ocular pharmaceutical agents similar to Section**
24 **463.002(3)(b), Florida Statutes. The motion was seconded.**

25
26 Mr. Harris stated that JAPC may object to the changes since it was already in board
27 statute.

28
29 **Dr. Kaplan rescinded his motion.**

30
31 The board had no further actions.

32
33 **EXECUTIVE DIRECTOR:**

34
35 Mr. Jusevitch provided an overview of HB 7015, relating to military and veteran support.
36 The section and line number that affects MQA is section 28, line 997 through 1052. To
37 date, the HB has not been signed into law.

38
39 Mr. Jusevitch further stated that the board would still determine whether an applicant is
40 approved for licensure.

41
42 **MEMO – Laws and Rules exam**

43
44 **Annual Delegation of Authority**

45
46 The board requested staff to place the disciplinary guidelines on the next agenda.

1
2 Discussion ensued.

3
4 **Dr. Maule moved to approve the Annual Delegation of Authority with the noted**
5 **corrections. The motion was seconded and carried 7/0.**

6
7 **MEMO - Jennifer Wenhold, Manager, Operational Support Services Unit.**

8
9 Mr. Jusevitch stated that the board had requested clarification of the Florida Optometry
10 Laws and Rules examination costs. Ms. Wenhold had indicated the laws and rules
11 examination is \$100.00. The fee is paid directly to the department and covers costs
12 associated with the development of the exam questions. The department's contracted
13 computer-based testing vendor's fee for the administration of the exam is \$58.00.

14
15 The board accepted the fess as presented.

16
17 **BOARD COUNSEL'S REPORT:**

18
19 • **Rules Status Report**

20
21 Mr. Harris provided an overview of the report.

22
23 Discussion ensued.

24
25 Mr. Harris and Dr. Naberhaus would provide the board with drafted language of Rule
26 64B13-4.006, F.A.C.

27
28 The board discussed the following rules:

- 29
30 • **Rule 64B13-4.009, Florida Administrative Code – Dispensing Practitioner**
31 **Registration**
32 • **JAPC Correspondence – Rule 64B13-16.002, Florida Administrative Code –**
33 **Branch Office License**

34
35 Mr. Harris provided an overview of the correspondence from JAPC on Rule 64B13-
36 4.009, F.A.C. He stated that JAPC was against the board in repealing the rule as they
37 believed the statute was clear in issuing a separate license to branch offices. However,
38 Mr. Harris indicated that he believed the board had authority to repeal the rule but it was
39 clearly up to the board.

40
41 **Dr. Kaplan moved to file for Notice of Rule Development for Rule 64B13-4.009,**
42 **F.A.C. The motion was seconded and carried 7/0.**

43
44 Dr. Naberhaus withdrew his motion.

45
46 The board requested the table this discussion until the next meeting.

1
2 • **Rule 64B13-4.004, Florida Administrative Code – Manner of Application**

3
4 Mr. Harris stated that the application form number needed to update with the Revised
5 3/14 date.

6
7 Discussion ensued.

8
9 **Dr. Kaplan moved to file for Notice of Rule Development for Rules 64B13-4.004,**
10 **F.A.C., to update the form titled “Application for Optometry Examination” number**
11 **DH-MQA 1128 (Revised 3/14). The motion was seconded and carried 7/0.**

12
13 **OFARR CORRESPONDENCE – Rule 64B13-15.005, FLORIDA**
14 **ADMINISTRATIVE CODE - Discussion**

15
16 Mr. Harris provided an overview of OFARR’s correspondence related to Rule
17 64B13.15.005, F.A.C. where it references Ch. 499.028, F.S. in 455.0276(2)(b) and (4),
18 F.S.

19
20 Discussion ensued.

21
22 **Dr. Naberhaus moved to file a Notice of Change to Rule 64B13-15.005(1)(h) and**
23 **(2)(b), F.A.C., to delete references of Ch. 499. The motion was seconded and carried**
24 **7/0.**

25
26 **Dr. Naberhaus moved that the proposed rule would not have any adverse impacts**
27 **on small businesses and the proposed rule would not be likely to directly or**
28 **indirectly increase regulatory costs to any entity (including government) in excess of**
29 **\$200,000 in the aggregate in Florida within 1 year after the implementation of the**
30 **rule. The motion was seconded and carried 7/0.**

31
32 **Dr. Naberhaus moved that the board had considered and discussed the elements of**
33 **the "Is a SERC Required" checklist prepared by OFARR and provided to the**
34 **Board in the meeting materials. The Board worked through the checklist, including**
35 **the determination of adverse impacts in Part I and the calculations required by Part**
36 **III, concluding there were no adverse impacts nor regulatory cost increases. Rather,**
37 **the Board determined that no SERC was required since the overall impact of the**
38 **proposed rule amendment would be to actually reduce costs imposed by the rule.**
39 **The motion was seconded and carried 7/0.**

40
41 **COMMITTEE REPORTS:**

42
43 **Budget – Mr. Presnell**

44
45 Mr. Presnell provided a brief report.

1 **Complaints, Investigation & Enforcement – Dr. Kaplan**

2
3 Dr. Kaplan had no report.

4
5 Ms. Guilford stated that she would contact the compliance officer to ensure Ms.
6 McNaughton was sent updated monthly reports and to make sure she sends a report to the
7 board with all licensees that she was monitoring.

8
9 **Continuing Education – Dr. Maule**

10
11 **Report of CE Provider & Courses approved by Staff**
12 **Report of CE Provider & Courses approved by Chair**

13
14 Dr. Maule provided an overview of the ratification list of CE Providers & Courses
15 approved by the CE Committee Chair and Staff.

16
17 **Dr. Maule moved to approve the ratification lists as provided. The motion was**
18 **seconded and carried 7/0.**

19
20 **Corporate Practice –**

21
22 No report.

23
24 **Disciplinary Compliance – Ms. McNaughton**

25
26 No report.

27
28 **Examination – Dr. King**

29
30 Dr. King provided a brief report.

31
32 **FOA – Dr. Underhill**

33
34 Dr. Underhill did not have a report.

35
36 Mr. John Griffin, with the Florida Optometry Association (FOA), provided a brief
37 overview of FOA's future meeting.

38
39 **Healthy Weight – Dr. King**

40
41 Dr. King stated that the first meeting will be July 14, 2014 in Tallahassee and will
42 provide a report at the next board meeting.

43
44 **Legislative – Dr. Underhill**

45
46 No report.

1
2 **Probable Cause – Mr. Presnell**

3
4 **Stats**

5
6 Information only.

7
8 **Rules – Dr. Naberhaus**

9
10 **Correspondence from NOVA Southeastern University – Rule**
11 **64B13-3.007(6)(c), Florida Administrative Code – Minimum**
12 **Procedures for Comprehensive Eye Examination**
13

14 Dr. Underhill stated that David S. Loshin, O.D., Ph.D., Dean with NSU College of
15 Optometry had submitted correspondence regarding NSU legal council’s concerns related
16 to whether a licensed practitioner or certified optometrist performing a vision screening
17 becomes the optometrist of record, which would trigger Practice Act, HIPAA, and record
18 maintenance requirements. Therefore, requested the board to consider the proposed
19 drafted language of Rule 64B13-3.007(6), F.A.C., as follows:

20
21 **64B13-3.007 Minimum Procedures for Comprehensive Eye Examination.**

22
23 (6) When a licensed practitioner or certified optometrist performs public service visual
24 screenings or visual screenings for governmental agencies it will not result in said
25 individual becoming the licensed practitioner or optometrist of record. Further, the
26 minimum procedures set forth in subsection (2) above shall not be required, nor shall the
27 requirements and record retention set forth in Rule 64B13-3.003, F.A.C., entitled “Patient
28 Records; Transfer or Death of Licensed Practitioner” be required in the following
29 circumstances.

30
31 Discussion ensued.

32
33 **Dr. Underhill moved to Notice for Rule Development of Rules 64B13-3.007(6),**
34 **F.A.C. The motion was seconded and carried 7/0.**

35
36 **Dr. Naberhaus moved that the proposed rule would not have any adverse impacts**
37 **on small businesses and the proposed rule would not be likely to directly or**
38 **indirectly increase regulatory costs to any entity (including government) in excess of**
39 **\$200,000 in the aggregate in Florida within 1 year after the implementation of the**
40 **rule. The motion was seconded and carried 7/0.**

41
42 **Dr. Naberhaus moved that the board had considered and discussed the elements of**
43 **the "Is a SERC Required" checklist prepared by OFARR and provided to the**
44 **Board in the meeting materials. The Board worked through the checklist, including**
45 **the determination of adverse impacts in Part I and the calculations required by Part**
46 **III, concluding there were no adverse impacts nor regulatory cost increases. Rather,**

1 **the Board determined that no SERC was required since the overall impact of the**
2 **proposed rule amendment would be to actually reduce costs imposed by the rule.**
3 **The motion was seconded and carried 7/0.**

4
5 **Unlicensed Activity – Dr. Kaplan**

6
7 No report.

8
9 **NEXT MEETING DATE – July 23rd – Boca Raton (FOA)**

10
11 Information only.

12
13 **ADJOURNMENT:**

14
15 The meeting was adjourned at 1:10 p.m.