

FLORIDA | Board of Optometry

MINUTES
July 23, 2014

Boca Raton, Florida



Timothy Underhill, OD
Chair

Stuart Kaplan, OD
Vice-Chair

Adrienne Rodgers, BSN, JD
Executive Director

Sharon Guilford, CPM
Program Operations Administrator

1 **General Board Business started: 9:08 a.m.**

2
3 The meeting was called to order by Dr. Underhill, Chair. Those present for all or part of the meeting included the following:

4
5 **MEMBERS PRESENT:**

6 Timothy Underhill, OD Chair
7 Stuart Kaplan, OD, Vice Chair
8 Christopher King, OD
9 Terrance Naberhaus, OD
10 Rosa McNaughton., JD, MS
11 Rod Presnell, R.Ph.

STAFF PRESENT:

Adrienne Rodgers, BSN, JD, Executive Director
Jose Montalvan, Regulatory Supervisor/Consultant

12
13
14 **BOARD COUNSEL:**

15 Lawrence Harris, Assistant Attorney General
16 Office of Attorney General

17
18 **PROSECUTION COUNSEL:**

19 Elana Jones, Assistant General Counsel
20 Department of Health, Office of the General Counsel

21
22 **COURT REPORTER:**

23 Court Reporter: Official Reporting Services
24 Tammie Taylor, 954-467-8204 or tammie@apex-rg.com

25
26 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from*
27 *this meeting can be found online: <http://floridasoptometry.gov/>*

28
29 **General Board Business started at 9:08 a.m.**

30
31 **I. APPROVAL OF PREVIOUS MEETING'S MINUTES OF THE BOARD OF OPTOMETRY**

32
33 February 26, 2014 – Telephone Conference Call
34 March 21, 2014 – Telephone Conference Call

35
36 Minutes of the February 26, 2014 General Business Meeting were reviewed.

37 Dr. Kaplan noted the following corrections to the minutes:

38 Page 1, should reflect Dr. Kaplan as Vice Chair

39
40 Minutes of the Mar 21, 2014 General Business Meeting were reviewed.

41
42 Motion to accept the minutes as amended was made by Dr King and seconded by Dr. Maule.

43
44 Vote unanimous yeas; motion carried.

45
46 **Section I General Board Business ended at 9:10 a.m.**

47 **Section II started at 9:10 a.m.**

48
49 **II. PETITION FOR DECLARATORY STATEMENT**

50
51 **1. Petition for declaratory statement**

- 52 a. Kimberly Reed, O.D., F.A.A.O-Section 463.002(7), Florida Statutes.
53 Dr. Reed was present but not represented by counsel.

54
55 Written responses were submitted by American Academy of Ophthalmology, and Bruce May, Esq. on behalf of Florida
56 Society of Ophthalmology (FSO). Mr. May was present and presented technical and legal concerns of the FSO.

1
2 The Petitioner's Petition for Declaratory Statement regarding the use of ProKera was presented to the Board.
3

4 Discussion: Dr. Underhill reviewed literature in the Optometry Times and asked Petitioner for comment. Dr. Naberhaus
5 asked if ProKera was classified as a drug or contact. Dr. King clarified some semantics. Mr. Harris stated that the
6 Petition met statutory and rule requirements; however, declaratory statements are a binding opinion on the Board and
7 intended for a single practitioner's benefit. This Petition was crafted such that it could apply to all ophthalmologists in
8 Florida.
9

10 Motion that a declaratory statement be issued by the Board approving the use of ProKera since it does meet section
11 120.465(2), F.S., is not surgery, and does not violate section 463.014(4), F.S. made by was made by Dr. King, seconded
12 by Dr. Naberhaus.
13

14 Members requested to have a telephonic board meeting for the purpose of reviewing the final order prior to filing.

15
16 Vote: 7 yeas / 0 opposed; motion carried
17

18 **Section II ended at 9:56 a.m.**
19 **Board moved to Section VI**
20 **Section VI began at 9:56 a.m.**
21

22 **VI. REVIEW OF ORAL PHARMACEUTICAL COURSE AND EXAMINATION - Florida Optometric Association, Inc.**
23 (FOA) John Griffin, Esq. appeared on behalf of the FOA.
24

25 Discussion ensued.
26

27 Motion to approve the online course and examination on general and ocular pharmaceutical agents, and their side effects jointly
28 developed by the FOA and the Florida Medical Association made by Dr. Naberhaus second by Dr. Kaplan.
29

30 Vote: 7 yeas / 0 opposed; motion carried
31

32 **Section VI ended at 10:00 a.m.**
33 **Section III started at 10:00 a.m.**
34

35 **III. PETITION FOR VARIANCE/WAIVER:**
36

37 1. George J. Brown, III, O.D. – Rule 64B13-4.001(2), Florida Administrative Code
38

39 Petitioner Brown was present and was not represented by counsel.
40

41 Petitioner requested a variance or waiver from Rule 64B13-4.002, F.A.C., which requires that passing scores on the NBEO must be
42 obtained in the seven (7) year period immediately preceding application to take Part IV of the licensure examination. Petitioner
43 allowed his license to go Null and Void on February 28, 2013, by failing to renew his license in the biennium renewal cycle ending
44 February 28, 2011, or at any time thereafter. As a result, Petitioner must re-apply for licensure. One requirement for licensure is
45 taking the NBEO examination. Petitioner originally took the examination when he was first licensed in Florida in 1991. He asked that
46 the Board waive the 7 year requirement.
47

48 Discussion ensued.
49

50 Dr. King made a motion to grant the Petition for Variance/Waiver of Rule 64B13-4.001(2), F.A.C., based upon length of practice and
51 experience and finds that Petitioner has demonstrated that the purpose of the underlying statute has been achieved by other means, and
52 application of a rule would create a substantial hardship or would violate principles of fairness. Dr. Maule seconded.
53

54 Vote: 1 yeas / 6 opposed. The motion failed.
55

56 Dr. Naberhaus moved to deny the Petition for Variance/Waiver of Rule 64B13-4.001(2), F.A.C. based on failure to state substantial
57 hardship, has not practiced in Florida in 20 years, and 7 year rule was created because of the varying standards of practice from state-
58 to state, Mr. Presnell seconded.

1
2 Dr. Naberhaus moved to approve Petitioner to sit for the examination, seconded by Dr. Kaplan. Vote: 6 yeas / 1 opposed; motion
3 carried.

4
5 Vote: 6 yeas / 1 opposed; motion carried

6
7
8 2. Mischelle L. Pearcy-Baluyot, O.D. – The North Central Florida Optometric Society – Rule 64B13-5.002(3)(c), Florida
9 Administrative Code.

10
11 Petitioner Pearcy-Baluyot was present and was not represented by counsel.

12
13 Petitioner requested a variance or waiver from Rule 64B13-5.002(3)(c), F.A.C. Petitioner is a Florida licensed optometrist and serves
14 as the primary contact between NCFOS and CE Broker. In her capacity as the primary contact, Petitioner believes she may have made
15 a clerical error in submitting documents demonstrating the 2 hours of the 6 hour course: VA Grand Rounds 2014 (COPE #40837-
16 PS/CEBroker #20-443758), was transcript quality (TQ). As a result, if the variance/waiver for this course is not given, approximately
17 44 attendees will fail to receive continuing education credit. Petitioner submitted documents demonstrating the transcript quality of
18 the course in support of her petition.

19
20 Discussion: Dr. King asked for more detail on sense of fairness or hardship. Dr. Maule stated the materials were submitted for 4 hours and the
21 course name for the 2 hours was approved for general credit, but all materials were there. Dr. Naberhaus stated it appears to be a clerical error.

22
23 **Action Taken:** Dr. Naberhaus made a motion to grant the Petition for Variance/Waiver of Rule 64B13-5.002(3)(c), F.A.C., based
24 upon being submitted prior to the course offering and it appearing that the failure to submit as TQ appears to be a clerical error, and
25 finds that Petitioner has demonstrated that the purpose of the underlying statute has been achieved by other means and application of a
26 rule would create a substantial hardship or would violate principles of fairness. Dr. Kaplan seconded.

27
28 Vote: 7 yeas / 0 opposed; motion carried

29
30 3. Richard J. Madonna, M.A., O.D., F.A.A.O. – Rule 64B13-5.002(3)(c), Florida Administrative Code

31
32 Petitioner Madonna was not present and was not represented by counsel. Other representative: Betsy Torres.

33
34 Petitioner requested a variance or waiver from Rule 64B13-5.002(3)(c), F.A.C. Petitioner is the Director of the Office of Continuing
35 Professional Education at SUNY College of Optometry. SUNY offered and conducted 5 courses prior to submitting documentation to
36 show the course was transcript quality. SUNY had already submitted a substantially similar petition, which was denied by the Board.

37
38 Discussion: Dr. Maule stated no precedent for approving courses after courses were presented. Ms. McNaughton asked if this petition was
39 untimely. Mr. Harris gave history of SUNY's prior attempt to get variance/waiver for these same courses.

40
41 Dr. Maule made a motion to deny the Petition for Variance/Waiver of Rule 64B13-5.002(3)(c), F.A.C., based upon the Board having
42 previously made a determination to deny a same or substantially similar petition by this petitioner for these same courses. Dr. Kaplan
43 seconded and the motion carried.

44
45 Vote: 7 yeas / 0 opposed; motion carried

46
47 **Section IV paused at 10:51 AM**

48 **Section VII began at 10:51 AM**

49
50 **VII. INFORMATION** – Joey Bergsma Retinoblastoma Awareness Foundation; flyers were passed out to Board members
51 showing information on various childhood eye diseases. Dr. Naberhaus suggested to Ms. Bergsma taking the request for brochures to
52 be printed to the health related various associations.

53
54 **Section VII ended 11:05 AM**

55 **Section IV resumed at 11:05 AM**

1 4. Rebecca Garces, O.D. – Rule 64B13-4.001(1)(c), Florida Administrative Code

2
3 Petitioner Garces was present and was not represented by counsel.

4
5 Petitioner requested an emergency hearing on her petition for variance or waiver from Rule 64B13-4.001(1)(c), F.A.C., which requires
6 that in addition to an overall passing score on the CSE portion, an applicant for licensure in Florida must obtain a score of 75 percent
7 (75%) or better on the Biomicroscopy, Binocular Indirect Ophthalmoscopy, and Dilated Biomicroscopy and Non-Contact Fundus
8 Lens Evaluation skills. Petitioner stated that her emergency was the passage of time, which would delay her being licensed in Florida.
9 Petitioner stated that she achieved excellent passing scores on each of the 3 parts, evidencing her abilities, and therefore should not be
10 required to pass all three parts at the same sitting of the examination. Petitioner stated that Petitioner has not yet applied for a license
11 in Florida.

12
13 Discussion: Dr. Naberhaus asked if there were extenuating circumstances but went on to state that board has always considered that all parts of the
14 test must be passed in one sitting.

15
16 Dr. Naberhaus made a motion to deny the Petition for Variance/Waiver of Rule 64B13-4.001(1)(c), F.A.C., based upon board's
17 interpretation of the rule that both parts of the examination must be passed in one sitting of the examination and finds that Petitioner
18 has not demonstrated that: the purpose of the underlying statute has been achieved by other means, application of a rule would create a
19 substantial hardship, or would violate principles of fairness. Dr. King seconded and the motion carried.

20
21 Vote: 7 yeas / 0 opposed; motion carried

22
23 **The following parts of Section XI began discussion at 11:08 a.m.**

24
25 10. Designation of administrative violations; major and minor – Rules 64B13-15.005 and 15.006, F.A.C. and Rule 64B13-
26 3.005, F.A.C. The board gave instructions to Mr. Harris to reach out to OFAR for suggestions as to a direction to research the
27 questions OFAR raised.

28
29 9. Dispensing practitioner registration – Rule 64B13-4.006, F.A.C. The Board requested Mr. Harris look into the 72 hour
30 reporting issue.

31
32 1. Minimum procedures for comprehensive eye examination rule 64B13-3.007, F.A.C. – exception from recordkeeping
33 rules for community service. Board counsel was instructed to go back to JAPC to work on language that would serve the
34 purpose of NOVA's request.

35
36 **The above discussion of Section IX ended at 12:06 a.m.**

37 **Ms. McNaughton left the meeting at 12:06 p.m.**

38
39 **Section III ended at 12:12 p.m.**

40 **Board recessed at 12:12 p.m.**

41
42 **Section IV started at 12:35 p.m.**

43 **Dr. Naberhaus not present.**

44
45 **IV. APPLICANTS PRESENTED FOR BOARD REVIEW:**

46
47 1. Kenneth A. Bono, O.D. - request to add oral prescriptive authority to applicant's existing Florida license.
48 Dr. Bono was not present and was not represented by counsel.

49
50 Applicant held an inactive license and was not currently practicing in Florida. The application was before the Board for consideration
51 of Applicant's request to add oral prescriptive authority to applicant's existing Florida license. Applicant had taken courses and
52 passed examinations sponsored by the State Boards of Missouri and Kansas where he is currently in practice.

53
54 Discussion ensued.

55
56 Dr. Maule moved to deny the application to add oral prescriptive authority to applicant's existing license based on lack of authority of
57 the Board to waive the requirement. Dr. Kaplan seconded.

1 Vote: 6 yeas / 0 opposed; motion carried
2
3

4 2. Ashley N. Baker, O.D. – applicant for optometry licensure. Applicant had incorrectly answered criminal question
5 in the affirmative. No action of the Board was necessary; applicant instructed to correct her application.
6

7
8 3. Seema B. Lengade, OD –
9 Dr. Lengade was not present and was not represented by counsel.

10 Applicant answered in the affirmative to application questions regarding criminal history. Applicant had multiple traffic offenses in
11 2002 through 2008, which were misdemeanors; and a single instance of operating a vehicle while intoxicated, later dismissed and
12 charges reduced to reckless operation of a vehicle, also a misdemeanor.
13

14 Discussion ensued.
15

16 **Dr. Naberhaus returned to the meeting 12:53 p.m.**
17

18 Motion to approve the application and issue a license made by Dr. King second by Dr. Kaplan
19

20
21 Vote: 6 yeas / 0 opposed; motion carried
22

23 **Section IV ended at 12:55 a.m.**

24 **Section V began at 12:56 a.m.**
25

26 **V. RATIFICATION OF LICENSURE**

27
28 1. Optometrists

29 Motion to ratify issuance of optometrist license numbers 4784 through 4917 made by Dr. Naberhaus. Second by Mr.
30 Presnell.
31

32 Vote: 6 yeas / 0 opposed; motion carried.
33

34 **Section V ended at 12:56 p.m.**

35 **Section VIII began 12:56 p.m.**
36

37 **VIII. CHAIR/VICE CHAIR REPORT**

38 Meeting of the Chair and Vice-Chair report.
39

40 **IX. EXECUTIVE DIRECTOR'S REPORT**

41 Ms. Rodgers presented data for CSU case consultant review and prescription drug monitoring program statistics.
42

43 Annual Delegation of Authority - Ms. Rodgers asked that the Board approve the delegation of authority as presented.

44 Motion to approve criminal history matrix of delegation as presented in the Board's package was made by Dr. King and seconded by
45 Dr. Maule.
46

47 Vote: 6 yeas / 0 opposed; motion carried.
48

49 **Section VIII ended at 1:00 p.m.**

50 **Section VIII began 1:00 p.m.**
51

52 **XI. BOARD COUNSEL'S REPORT**

53 Ratification Annual Regulatory Plan

54 Mr. Harris informed the Board that each year the boards must review existing rules and regulations to determine if there are
55 duplicative or unnecessarily burdensome rules or regulations that should be modified or eliminated. To that end, the Board has been
56 provided a list, called the Annual Regulatory Plan, which shows the rules of this Board that are or may be in need of modification or
57 elimination.
58

1
2 Discussion ensued.

3
4 Motion to ratify Chair's acceptance of the Annual Regulatory Plan was made by Dr. Naberhaus and seconded by Dr. Maule.

5
6 Vote: 6 yeas / 0 opposed; motion carried.

7
8 2. Mr. Harris gave the rules Status Report for June 2014.

9
10 3. Examination requirements – Rule 64B13-4.001, F.A.C. There may be a cost impact for anyone who must retake the
11 examination; however, this language only clarifies the language in the existing rule as applied by this Board.

12
13 Motion to approve the language as presented made by Dr. Naberhaus second by Dr. King.

14
15 Vote: 6 yeas / 0 opposed; motion carried.

16
17 Dr. Naberhaus made a motion that no SERC is required; the language does not impose additional costs. Seconded by Dr. Maule.

18
19 Vote: 6 yeas / 0 opposed; motion carried.

20
21 4. Manner of application – Rule 64B13-4.004, F.A.C.

22
23 Motion to publish a notice of correction as shown on page 499 of the Board's agenda made by Dr. Naberhaus second by Dr. King.
24 Vote unanimous, motion carried.

25
26 Dr. Maule made a motion that no SERC was needed and the language does not impose additional costs or adversely impact small
27 businesses, seconded by Mr. Presnell.

28
29 Vote: 6 yeas / 0 opposed; motion carried.

30
31 5. Criteria for selection of examiners and consultants – Rule 64B13-4.005, F.A.C.

32
33 Motion to approve the language as presented made by Dr. Naberhaus, second by Drs. Maule and King. Vote unanimous, motion
34 carried.

35
36 Vote: 6 yeas / 0 opposed; motion carried.

37
38 Dr. Kaplan made a motion that no SERC is needed as the language does not impose additional costs, or adversely impact small
39 businesses as there has been no opportunity for examiners since 2013, seconded by Dr. Maule.

40
41 Vote: 6 yeas / 0 opposed; motion carried.

42
43 6. Security and monitoring procedures for licensure examination – Rule 64B13-4.006, F.A.C.

44
45 Motion to approve the language as presented made by Dr. Maule, second by Dr. Naberhaus.

46
47 Vote: 6 yeas / 0 opposed; motion carried.

48
49 Dr. Maule made a motion that no SERC is needed as the language does not impose additional costs, or adversely impact small
50 businesses, seconded by Dr. Kaplan.

51
52 Vote: 6 yeas / 0 opposed; motion carried.

1 8. Fees – Rule 64B13-6.001, F.A.C.

2
3 Dr. Naberhaus made a motion to approve the language as presented and that no SERC is needed as the language does not impose
4 additional costs, or adversely impact small businesses, seconded by Mr. Presnell.

5
6 Vote: 6 yeas / 0 opposed; motion carried.

7
8 Board Counsel presented a suggestion for new rule language regarding Dispensing Practitioner Regulation allowing applicants to
9 apply as for Dispensing Practitioner with the initial application. Dr. Naberhaus suggested an alternative to add language as shown on
10 pages 523 and 515-516 of the Board’s agenda to rule 64B13-4.009, F.A.C. showing practitioners what responsibilities come with
11 becoming a Dispensing Practitioner.

12
13 Dr. Naberhaus made a motion to add language as shown on pages 523 and 515-516 of the Board’s agenda to rule 64B13-4.009,
14 F.A.C., seconded by Dr. Maule.

15
16 Vote: 6 yeas / 0 opposed; motion carried.

17
18 Dr. King made a motion that no SERC is needed as the language does not impose additional costs, or adversely impact small
19 businesses, seconded by Dr. Kaplan.

20
21 Vote: 6 yeas / 0 opposed; motion carried.

22
23 10. Designation of administrative violations; major and minor – Board Counsel proposed change to rule 64B13-15.005,
24 F.A.C.

25
26 Dr. Naberhaus made a motion to develop rule 64B13-15.005(1)(m) and rule 64B13-15.005(2)(h), F.A.C., for instances not resulting in
27 patient injury, and add rule 64B13-15.006(1)(m) for instances resulting in harm to the patient, second Dr. Maule. Vote unanimous;
28 motion carried.

29
30 Dr. Naberhaus made a motion that no SERC is needed as the language does not impose additional costs, or adversely impact small
31 businesses, seconded by Dr. Maule.

32
33 Vote: 6 yeas / 0 opposed; motion carried.

34
35 **Discussion ended at 2:52 P.M.**
36 **Section XII began at 2:53 a.m.**

37
38 **XII. COMMITTEE REPORTS**

39 Budget – Mr. Presnell

40
41 No report.

42
43 Continuing Education – Dr. Maule, OD

- 44 a. CE Providers & Courses Approved by Board Staff
45 b. CE Providers & Courses Approved by CE Committee

46
47 Committee Chair moved to ratify both CE Providers & Courses Approved by Board Staff and those approved by CE
48 Committee. Seconded by Dr. King.

49
50 Vote: 6 yeas / 0 opposed; motion carried.

51
52 Complaints, Investigation & Enforcement Liaison – Stuart Kaplan, OD

53
54 Ms. Jones presented the prosecution report and the statistics of received complaints through probable cause. The Board
55 asked that a representative attend the next Board meeting to give information in the raw numbers received in the
56 Consumer Services Unit (CSU); the numbers closed in CSU for lack of legal sufficiency; the numbers of total cases
57 reviewed by the consultant and number of those cases closed at CSU.
58

1 Corporate Practice – inactive committee

2
3 Disciplinary Compliance – Ms. Rosa McNaughton, Esq.

4
5 No report.

6
7 Examination – Dr. King, OD reported that the inaugural process went well.

8
9 FOA – Dr. Kaplan, OD

10
11 Committee Chair reported his presentation to FOA will be given on July 24, 2014.

12
13 Healthiest Weight– Dr. King, OD

14
15 Update from July 14, 2014 meeting. Dr. King reported that the meeting also addressed the negative economic impact of
16 obesity and the importance of educating the public.

17
18 Legislative – Dr. Underhill, OD

19
20 No report.

21
22 Probable Cause– Mr. Presnell, R.PH

23
24 Mr. Presnell stated that the Prosecution Report covered this topic.

25
26 Rules – Dr. Naberhaus, OD

27
28 No report.

29
30 Unlicensed Activity – Stuart Kaplan, OD

31
32 No report.

33
34
35 **XII. APPROVAL OF 2015 MEETING DATES**

36
37 The Board approved the following meeting dates:

38 February 27, 2015-Orlando

39 July 15, 2015 (FOA-Palm Beach)

40 December 4, 2015- Orlando

41
42 Motion to approve the 2015 meeting dates made by Dr. Kaplan, and seconded by Dr. Naberhaus

43
44 Vote: 6 yeas / 0 opposed; motion carried.

45
46 **Section XII General Board Business ended at 3:03 p.m.**

47
48
49
50 NEXT MEETING – November 14, 2014 – Orlando

51
52 **General Board Business concluded at: 3:03 p.m.**

53 The meeting was adjourned at 3:03 p.m.